

House-passed H.R. 4173	Senate-passed H.R. 4173 (S. 3217 as amended)	Notes
<p align="center"><b>TITLE III--DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT</b></p> <p><b>SEC. 3001. SHORT TITLE.</b></p> <p>This title may be cited as the `Derivative Markets Transparency and Accountability Act of 2009'.</p>	<p align="center"><b>TITLE VII--WALL STREET TRANSPARENCY AND ACCOUNTABILITY</b></p> <p><b>SEC. 701. SHORT TITLE.</b></p> <p><i>This title may be cited as the `Wall Street Transparency and Accountability Act of 2010'.</i></p> <p align="center"><b>Subtitle A--Regulation of Over-the-Counter Swaps Markets</b></p>	
<p><b>SEC. 3002. REVIEW OF REGULATORY AUTHORITY.</b></p> <p>(a) Consultation-</p> <p>(1) CFTC- Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.</p> <p>(2) SEC- Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the Prudential Regulators.</p> <p>(3) In developing and promulgating rules or orders pursuant to this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consider each other's views and the views of the Prudential Regulators.</p> <p>(4) In adopting a rule or order described in paragraph (1) or (2), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities similarly.</p> <p>(5) Paragraph (4) shall not be construed to require the Commodity Futures Trading Commission or the Securities Exchange Commission to adopt a rule or order that treats functionally or economically similar products or entities identically.</p>	<p><b>PART I--REGULATORY AUTHORITY</b></p> <p><b>SEC. 712. REVIEW OF REGULATORY AUTHORITY.</b></p> <p>(a) <i>Regulatory Authority-</i></p> <p>(1) <i>IN GENERAL- Except as provided in paragraphs (4) and (8), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall each prescribe such regulations as may be necessary to carry out the purposes of this title.</i></p> <p>(2) <i>COORDINATION, CONSISTENCY, AND COMPARABILITY- Both Commissions required under paragraph (1) to prescribe regulations shall consult and coordinate with each other for the purposes of assuring, to the extent possible, that the regulations prescribed by each such Commission are consistent and comparable with the regulations prescribed by the other.</i></p> <p>(3) <i>PROCEDURES AND DEADLINE- Such regulations shall be prescribed in accordance with applicable requirements of title 5, United States Code, and, shall be issued in final form not later than 180 days after the date of enactment of this Act.</i></p> <p>(4) <i>APPLICABILITY- The requirements of paragraph (1) shall not apply to an order issued--</i></p> <p>(A) <i>in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);</i></p> <p>(B) <i>in connection with or arising from a violation or potential violation of any provision of the securities laws; or</i></p> <p>(C) <i>in any proceeding that is conducted on the record</i></p>	

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	<p><i>in accordance with sections 556 and 557 of title 5, United States Code.</i></p> <p>(5) <i>EFFECT- Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the 'Administrative Procedure Act').</i></p> <p>(6) <i>RULES; ORDERS- In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.</i></p> <p>(7) <i>TREATMENT OF SIMILAR PRODUCTS AND ENTITIES-</i></p> <p style="padding-left: 40px;">(A) <i>IN GENERAL- In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.</i></p> <p style="padding-left: 40px;">(B) <i>EFFECT- Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.</i></p> <p>(8) <i>MIXED SWAPS- The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section (68)(D) of the Securities Exchange Act of 1934 (15 U.S.C. (68)(D)), as may be necessary to carry out the purposes of this title.</i></p>	
<p>(b) Limitation-</p> <p>(1) CFTC- Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of--</p> <p style="padding-left: 40px;">(A) security-based swaps; or</p> <p style="padding-left: 40px;">(B) with regard to their activities or functions concerning security-based swaps--</p> <p style="padding-left: 80px;">(i) security-based swap dealers;</p> <p style="padding-left: 80px;">(ii) major security-based swap participants;</p> <p style="padding-left: 80px;">(iii) security-based swap repositories;</p> <p style="padding-left: 80px;">(iv) persons associated with a security-based swap dealer or major security-based swap</p>	<p>(b) Limitation-</p> <p>(1) <i>COMMODITY FUTURES TRADING COMMISSION- Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of--</i></p> <p style="padding-left: 40px;"><i>(A) security-based swaps; or</i></p> <p style="padding-left: 40px;"><i>(B) with regard to its activities or functions concerning security-based swaps--</i></p> <p style="padding-left: 80px;"><i>(i) security-based swap dealers;</i></p> <p style="padding-left: 80px;"><i>(ii) major security-based swap participants;</i></p> <p style="padding-left: 80px;"><i>(iii) security-based swap data repositories;</i></p> <p style="padding-left: 80px;"><i>(iv) persons associated with a security-based</i></p>	

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<p>participant;  (v) eligible contract participants with respect to security-based swaps; or  (vi) swap execution facilities.</p> <p>(2) SEC- Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of--</p> <p>(A) swaps; or  (B) with regard to their activities or functions concerning swaps--</p> <p>(i) swap dealers;  (ii) major swap participants;  (iii) swap repositories;  (iv) persons associated with a swap dealer or major swap participant;  (v) eligible contract participants with respect to swaps; or  (vi) swap execution facilities.</p>	<p><i>swap dealer or major security-based swap participant;</i>  (v) <i>eligible contract participants with respect to security-based swaps; or</i>  (vi) <i>swap execution facilities with respect to security-based swaps.</i></p> <p>(2) <i>SECURITIES AND EXCHANGE COMMISSION- Nothing in this title, unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of--</i></p> <p>(A) <i>swaps; or</i>  (B) <i>with regard to its activities or functions concerning swaps--</i></p> <p>(i) <i>swap dealers;</i>  (ii) <i>major swap participants;</i>  (iii) <i>swap data repositories;</i>  (iv) <i>persons associated with a swap dealer or major swap participant;</i>  (v) <i>eligible contract participants with respect to swaps; or</i>  (vi) <i>swap execution facilities with respect to swaps.</i></p> <p>(3) <i>PROHIBITION ON CERTAIN FUTURES ASSOCIATIONS AND NATIONAL SECURITIES ASSOCIATIONS-</i></p> <p>(A) <i>FUTURES ASSOCIATIONS- Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this shall not limit the authority of a national futures association to examine for compliance with and enforce its rules on advertising and capital adequacy.</i></p> <p>(B) <i>NATIONAL SECURITIES ASSOCIATIONS- Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert</i></p>	

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	<p><i>jurisdiction over, for any purpose, any swap, except that this shall not limit the authority of a national securities association to examine for compliance with and enforce its rules on advertising and capital adequacy.</i></p>	
<p>(c) Objection to Commission Regulation-</p> <p>(1) FILING OF PETITION FOR REVIEW- If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.</p>	<p>(c) Objection to Commission Regulation-</p> <p>(1) FILING OF PETITION FOR REVIEW-</p> <p>(A) IN GENERAL- <i>If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.</i></p> <p>(B) EXPEDITED PROCEEDING- <i>A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.</i></p>	
<p>(2) TRANSMITTAL OF PETITION AND RECORD- A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the Secretary of the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the rule, regulation, or order under review and any documents referred to therein, and any other materials prescribed by the court.</p>	<p>(2) TRANSMITTAL OF PETITION AND RECORD-</p> <p>(A) IN GENERAL- <i>A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.</i></p> <p>(B) DUTY OF RESPONDING COMMISSION- <i>On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit--</i></p> <p><i>(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and</i></p> <p><i>(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.</i></p>	
<p>(3) STANDARD OF REVIEW- The court, giving deference to the views of neither Commission, shall determine to affirm or</p>	<p>(3) STANDARD OF REVIEW- <i>The United States Court of Appeals for the District of Columbia Circuit shall--</i></p>	

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<p>set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court, as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.</p>	<p>(A) give deference to the views of neither Commission; and (B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.</p>	
<p>(4) JUDICIAL STAY- The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order, until the date on which the determination of the court is final (including any appeal of the determination).</p>	<p>(4) JUDICIAL STAY- The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).</p>	
	<p>(d) Adoption of Rules on Uncleared Swaps- Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall, after consulting with each other Commission, adopt rules-- (1) to require the maintenance of records of all activities relating to transactions in swaps and security-based swaps under the respective jurisdictions of the Commodity Futures Trading Commission and the Securities and Exchange Commission that are uncleared; (2) to make available, consistent with section 8 of the Commodity Exchange Act (7 U.S.C. 12), to the Securities and Exchange Commission information relating to swaps transactions that are uncleared; and (3) to make available to the Commodity Futures Trading Commission information relating to security-based swaps transactions that are uncleared.</p>	
<p>(d) Definitions- In this section, the terms `Prudential Regulators', `swap', `swap dealer', `major swap participant', `swap repository', `person associated with a swap dealer or major swap participant', `eligible contract participant', `swap execution facility', `security-based swap', `security-based swap dealer', `major security-based swap participant', `security-based swap repository', and `person associated with a security-based swap dealer or major security-based swap participant' shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.</p>	<p><b>SEC. 711. DEFINITIONS.</b>  <i>In this subtitle, the terms `prudential regulator', `swap', `swap dealer', `major swap participant', `swap data repository', `associated person of a swap dealer or major swap participant', `eligible contract participant', `swap execution facility', `security-based swap', `security-based swap dealer', `major security-based swap participant', `swap data repository', and `associated person of a security-based swap dealer or major security-based swap participant' have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</i></p>	
<p>(e)(1) Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities Exchange Commission shall</p>	<p><b>SEC. 712. REVIEW OF REGULATORY AUTHORITY.(cont.)</b></p>	

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<p>jointly adopt rules to--</p> <p>(A) define the terms `security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 and `swap' in section 1a(35)(A)(v) of the Commodity Exchange Act;</p> <p>(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and</p> <p>(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.</p>	<p><i>(e) Definitions- Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt rules to define the term `security-based swap agreement' in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and in section 3(a)(78) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(78)).</i></p>	
<p>(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute--</p> <p>(A) within a reasonable time after receiving the request;</p> <p>(B) after consideration of relevant information provided by each Commission; and</p> <p>(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.</p>	<p><i>(f) Global Rulemaking Timeframe- Unless otherwise provided in a particular provision of this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 180 days after the date of enactment of this Act.</i></p> <p><i>(g) Expedited Rulemaking Process- The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, may use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this title and the amendments made by this title if, in either of the Commissions' discretion, it considers it necessary to do so.</i></p>	
<p><b>SEC. 3003. INTERNATIONAL HARMONIZATION.</b></p> <p>(a) In order to promote effective and consistent global regulation of contracts of sale of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of swaps and security-based swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.</p> <p>(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a</p>	<p><b>SEC. 752. INTERNATIONAL HARMONIZATION.</b></p> <p><i>In order to promote effective and consistent global regulation of swaps and security-based swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Stability Oversight Council, and the Treasury Department--</i></p> <p><i>(1) shall, both individually and collectively, consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of such swaps; and</i></p> <p><i>(2) may, both individually and collectively, agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.</i></p>	

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<p>commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.</p>		
<p><b>SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.</b></p> <p>(a) In General- No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.</p> <p>(b) Definition- For the purposes of this section, the term `Federal assistance' means the use of public funds for the purposes of--</p> <ul style="list-style-type: none"> <li>(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;</li> <li>(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;</li> <li>(3) assuming or guaranteeing the obligations of a derivatives clearing organization, a clearing agency, or a subsidiary of either; or</li> <li>(4) acquiring any type of equity interest or security of a derivatives clearing organization, a clearing agency, or a subsidiary of either.</li> </ul>	<p><b>SEC. 716. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.</b></p> <p>(a) <i>Prohibition on Federal Assistance- Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.</i></p> <p>(b) <i>Definitions- In this section:</i></p> <ul style="list-style-type: none"> <li>(1) <i>FEDERAL ASSISTANCE- The term `Federal assistance' means the use of any funds, including advances from any Federal Reserve credit facility, discount window, or pursuant to the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority), Federal Deposit Insurance Corporation insurance, or guarantees for the purpose of--</i> <ul style="list-style-type: none"> <li>(A) <i>making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;</i></li> <li>(B) <i>purchasing the assets of any swaps entity;</i></li> <li>(C) <i>guaranteeing any loan or debt issuance of any swaps entity; or</i></li> <li>(D) <i>entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.</i></li> </ul> </li> <li>(2) <i>SWAPS ENTITY- The term `swaps entity' means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, swap execution facility, designated contract market, national securities exchange, central counterparty, clearing house, clearing agency, or derivatives clearing organization that is registered under--</i> <ul style="list-style-type: none"> <li>(A) <i>the Commodity Exchange Act (7 U.S.C. 1 et seq.);</i></li> <li>(B) <i>the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or</i></li> <li>(C) <i>any other Federal or State law (including regulations).</i></li> </ul> </li> </ul>	
<p><b>SEC. 3005. STUDIES.</b></p>		

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<p>(a) Study on Effects of Position Limits on Trading on Exchanges in the United States-</p> <p>(1) STUDY- The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.</p> <p>(2) REPORT TO THE CONGRESS- Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).</p> <p>(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.</p> <p>(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.</p> <p>(b) Study on Feasibility of Requiring Use of Standardized Algorithmic Descriptions for Financial Derivatives-</p> <p>(1) IN GENERAL- The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.</p> <p>(2) GOALS- The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of</p>		

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<p>individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:</p> <ul style="list-style-type: none"> <li>(A) commercial users and traders of derivatives;</li> <li>(B) derivative clearing houses, exchanges and electronic trading platforms;</li> <li>(C) trade repositories and regulator investigations of market activities; and</li> <li>(D) systemic risk regulators.</li> </ul> <p>The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.</p> <p>(3) INTERNATIONAL COORDINATION- In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.</p> <p>(4) REPORT- Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).</p> <p>(c) Study of Desirability and Feasibility of Establishing Single Regulator for All Transactions Involving Financial Derivatives-</p> <ul style="list-style-type: none"> <li>(1) IN GENERAL- The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.</li> <li>(2) REPORT TO THE CONGRESS- Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on</li> </ul>		

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<p>Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by paragraph (1).</p>		
<p><b>SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.</b></p> <p>Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws--</p> <p>(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including--</p> <p>(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and</p> <p>(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;</p> <p>(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and</p> <p>(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).</p>	<p><b>SEC. 713. RECOMMENDATIONS FOR CHANGES TO PORTFOLIO MARGINING LAWS.</b></p> <p><i>Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators shall submit to the appropriate committees of Congress recommendations for legislative changes to the Federal laws to facilitate the portfolio margining of securities and commodity futures and options, commodity options, swaps, and other financial instrument positions.</i></p>	
<p><b>SEC. 3007. ABUSIVE SWAPS.</b></p> <p>The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-</p>	<p><b>SEC. 714. ABUSIVE SWAPS.</b></p> <p><i>The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order--</i></p> <p><i>(1) collect information as may be necessary concerning the markets for any types of--</i></p>	

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<p>based swap (as defined in section 1a(38) of such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.</p>	<p>(A) swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or  (B) security-based swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); and  (2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to--  (A) the stability of a financial market; or  (B) participants in a financial market.</p>	
<p><b>SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.</b></p> <p>If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.</p>	<p><b>SEC. 715. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.</b></p> <p><i>Except as provided in section 4 of the Commodity Exchange Act (7 U.S.C. 6) (as amended by section 738), if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.</i></p>	
<p><b>SEC. 3009. MEMORANDUM.</b></p> <p>(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for--  (A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;  (B) resolving conflicts concerning overlapping jurisdiction between the two agencies; and  (C) avoiding, to the extent possible, conflicting or duplicative regulation.</p> <p>(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.</p> <p>(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation,</p>	<p><b>SEC. 722. JURISDICTION.</b></p> <p><i>(e) Just and Reasonable Rates- Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:</i></p> <p style="padding-left: 40px;">(vi) <i>Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed--</i></p> <p style="padding-left: 80px;">(I) <i>to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);</i></p> <p style="padding-left: 80px;">(II) <i>to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to</i></p>	

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<p>fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.</p>	<p><i>ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I); or (III) to supersede or limit the authority of a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) that has jurisdiction to regulate rates and charges for the sale of electric energy within the State, or restrict that State regulatory authority from carrying out the duties and responsibilities of the State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.</i></p> <p><i>(vii) Nothing in clause (vi) shall affect the Commission's authority with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swaps execution facility.</i></p> <p><i>(f) Public Interest Waiver- Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:</i></p> <p><i>(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into--</i></p> <p><i>(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;</i></p> <p><i>(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or</i></p>	

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	<p><i>municipality; or</i>  <i>“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”.</i></p>	
<p><b>Subtitle A--Regulation of Swap Markets</b></p> <p><b>SEC. 3101. DEFINITIONS.</b></p>	<p><b>PART II--REGULATION OF SWAP MARKETS</b></p> <p><b>SEC. 721. DEFINITIONS.</b></p> <p><i>(a) In General- Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended--</i></p> <p><i>(1) by redesignating paragraphs (2), (3) and (4), (5) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (6), (8) and (9), (11) through (23), (26) through (31), (34) through (38), (40), (41), (44) through (46), and (51), respectively;</i></p>	
<p>(a) Amendments to Definitions in the Commodity Exchange Act- Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended--</p> <p>(1) in paragraph (12)(A)--</p> <p>(A) in clause (vii)(III), by striking ‘\$25,000,000’ and inserting ‘\$50,000,000’; and</p> <p>(B) in clause (xi), by striking ‘total assets in an amount’ and inserting ‘amounts invested on a discretionary basis’;</p> <p>(2) in paragraph (29)--</p> <p>(A) in subparagraph (D), by striking ‘and’;</p> <p>(B) by redesignating subparagraph (E) as subparagraph (G); and</p> <p>(C) by inserting after subparagraph (D) the following:</p> <p>‘(E) a swap execution facility registered under section 5h;</p> <p>‘(F) a swap repository; and’; and</p>		
<p>(3) by adding at the end the following:</p> <p>‘(35) SWAP-</p> <p>‘(A) IN GENERAL- Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction that--</p> <p>‘(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities,</p>	<p><i>(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:</i></p> <p><i>47) SWAP-</i></p> <p><i>‘(A) IN GENERAL- Except as provided in subparagraph (B), the term ‘swap’ means any agreement, contract, or transaction--</i></p> <p><i>‘(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1</i></p>	

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<p>securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;</p> <p>(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;</p> <p>(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, and includes any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;</p> <p>(iv) is, or in the future becomes, commonly known to the trade as a swap;</p> <p>(v) meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which is based on the price, yield, value, or</p>	<p><i>or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;</i></p> <p><i>(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;</i></p> <p><i>(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as--</i></p> <p><i>(I) an interest rate swap;</i></p> <p><i>(II) a rate floor;</i></p> <p><i>(III) a rate cap;</i></p> <p><i>(IV) a rate collar;</i></p> <p><i>(V) a cross-currency rate swap;</i></p> <p><i>(VI) a basis swap;</i></p> <p><i>(VII) a currency swap;</i></p> <p><i>(VIII) a foreign exchange swap;</i></p> <p><i>(IX) a total return swap;</i></p> <p><i>(X) an equity index swap;</i></p> <p><i>(XI) an equity swap;</i></p> <p><i>(XII) a debt index swap;</i></p>	

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<p>volatility of any security or any group or index of securities, or any interest therein; or  (vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).</p>	<p>(XIII) a debt swap;  (XIV) a credit spread;  (XV) a credit default swap;  (XVI) a credit swap;  (XVII) a weather swap;  (XVIII) an energy swap;  (XIX) a metal swap;  (XX) an agricultural swap;  (XXI) an emissions swap; and  (XXII) a commodity swap;  (iv) that is an agreement, contract, or transaction that is, or in the future becomes commonly known to the trade as a swap;  (v) including any security-based swap agreement which meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or  (vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).</p>	
<p>(B) EXCLUSIONS- The term 'swap' does not include--  -  (i) any contract of sale of a commodity for future delivery (or any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;  (ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;  (iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities</p>	<p>(B) EXCLUSIONS- The term 'swap' does not include--  (i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);  (ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;  (iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to--  (I) the Securities Act of 1933 (15</p>	

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<p>Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);</p> <p>(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));</p> <p>(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);</p> <p>(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;</p> <p>(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));</p> <p>(viii) any agreement, contract, or transaction that is--</p> <ul style="list-style-type: none"> <li>(I) based on a security; and</li> <li>(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) by the issuer of the security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital-raising;</li> </ul>	<p><i>U.S.C. 77a et seq.); and</i></p> <p><i>(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);</i></p> <p><i>(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));</i></p> <p><i>(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to--</i></p> <ul style="list-style-type: none"> <li><i>(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and</i></li> <li><i>(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);</i></li> </ul> <p><i>(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;</i></p> <p><i>(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));</i></p> <p><i>(viii) any agreement, contract, or transaction that is--</i></p> <ul style="list-style-type: none"> <li><i>(I) based on a security; and</i></li> <li><i>(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement,</i></li> </ul>	

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<p>           `(ix) any foreign exchange forward;            `(x) any foreign exchange swap;            `(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and            `(xii) any security-based swap.         </p>	<p> <i>contract, or transaction is entered into to manage a risk associated with capital raising;</i>  <i> `(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and            `(x) any security-based swap, other than a security-based swap as described in subparagraph (D).</i> </p>	
<p>           `(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS- The term `swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).         </p>	<p>           `(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS-  <i> `(i) IN GENERAL- Except as provided in clause (ii), the term `swap' includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).            `(ii) EXCEPTION- For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).            `(D) MIXED SWAP- The term `security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event</i> </p>	

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	<i>described in subparagraph (A)(iii).</i>	
<p><b>^(D) FOREIGN EXCHANGE SWAPS AND FORWARDS EXCEPTION-</b></p> <p>^(i) <b>IN GENERAL-</b> Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act and the Secretary concurs with such determination.</p> <p>^(ii) <b>SCOPE OF AUTHORITY-</b></p> <p>^(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary may jointly amend any previously made determination under this subclause.</p> <p>^(II) Notwithstanding clause (i), the Commission and the Secretary of the Treasury may determine that either foreign exchange swaps or foreign exchange forwards or both should not be regulated as swaps under this Act if such determination is jointly made.</p>	<p><b>^(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS-</b></p> <p>^(i) <b>IN GENERAL-</b> <i>Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both--</i></p> <p style="padding-left: 40px;">^(I) <i>should be not be regulated as swaps under this Act; and</i></p> <p style="padding-left: 40px;">^(II) <i>are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.</i></p> <p>^(ii) <b>CONGRESSIONAL NOTICE; EFFECTIVENESS-</b> <i>The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.</i></p>	
<p>^(iii) <b>REPORTING-</b> Notwithstanding clauses (ix) and (x) of subparagraph (B) and subparagraph (D)(ii), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap repository, or, if there is no swap repository that would accept such swaps or forwards, to the Commission</p>	<p>^(iii) <b>REPORTING-</b> <i>Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to</i></p>	

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<p>pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.</p>	<p><i>section 4r within such time period as the Commission may by rule or regulation prescribe.</i>  <i>`(iv) BUSINESS STANDARDS- Notwithstanding clauses (ix) and (x) of subparagraph (B) and clause (ii), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).</i></p>	
<p>`(iv) SECRETARY- For purposes of this subparagraph only, the term `Secretary' means the Secretary of the Treasury.</p>	<p><i>`(v) SECRETARY- For purposes of this subparagraph only, the term `Secretary' means the Secretary of the Treasury.</i></p>	
	<p><i>`(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS-  `i) REGISTERED ENTITIES- Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.  `ii) RETAIL TRANSACTIONS- Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).</i></p>	
<p>`(36) BOARD- The term `Board' means the Board of Governors of the Federal Reserve System.</p>	<p><i>`(5) BOARD- The term `Board' means the Board of Governors of the Federal Reserve System.';</i></p>	
<p>`(37) SECURITY-BASED SWAP- The term `security-based swap' has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.</p>	<p><i>`(42) SECURITY-BASED SWAP- The term `security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).</i></p>	
<p>`(38) SWAP DEALER-  `A) IN GENERAL- The term `swap dealer' means any</p>	<p><i>`(49) SWAP DEALER-  `A) IN GENERAL- The term `swap dealer' means any</i></p>	

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<p>person who--</p> <ul style="list-style-type: none"> <li>`(i) holds itself out as a dealer in swaps;</li> <li>`(ii) makes a market in swaps;</li> <li>`(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or</li> <li>`(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.</li> </ul> <p>`(B) A person may be designated a swap dealer for a single type or single class or category of swap and considered not a swap dealer for other types, classes, or categories of swaps.</p>	<p><i>person who--</i></p> <ul style="list-style-type: none"> <li><i>`(i) holds itself out as a dealer in swaps;</i></li> <li><i>`(ii) makes a market in swaps;</i></li> <li><i>`(iii) regularly engages in the purchase and sale of swaps in the ordinary course of business; or</i></li> <li><i>`(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.</i></li> </ul> <p><i>`(B) INCLUSION- A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.</i></p> <p><i>`(C) CAPITAL- In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer.</i></p>	
<p>`(C) DE MINIMUS EXCEPTION- The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.</p>	<p><i>`(D) EXCEPTION- The term `swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.</i></p>	
<p>`(39) MAJOR SWAP PARTICIPANT-</p> <p>`(A) IN GENERAL- The term `major swap participant' means any person who is not a swap dealer, and--</p> <ul style="list-style-type: none"> <li>`(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or</li> <li>`(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant</li> </ul>	<p><i>`(33) MAJOR SWAP PARTICIPANT-</i></p> <p><i>`(A) IN GENERAL- The term `major swap participant' means any person who is not a swap dealer, and--</i></p> <ul style="list-style-type: none"> <li><i>`(i) maintains a substantial position in swaps for any of the major swap categories as determined by the Commission, excluding--</i></li> <li><i>`(I) positions held for hedging or mitigating commercial risk; and</i></li> <li><i>`(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of</i></li> </ul>	<p>See Section 3307 of HR 4173 for an additional, differing definition of Major Swap Participant.</p>

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<p>credit losses.</p> <p>“(B) DEFINITION OF SUBSTANTIAL NET POSITION- The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared swaps.</p> <p>“(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.</p>	<p><i>section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; or</i></p> <p><i>“(ii) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or</i></p> <p><i>“(ii)(I) is a financial entity, other than an entity predominantly engaged in providing financing for the purchase of an affiliate’s merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds; and</i></p> <p><i>“(II) maintains a substantial position in outstanding swaps in any major swap category as determined by the Commission.</i></p> <p><i>“(B) DEFINITION OF SUBSTANTIAL POSITION- For purposes of subparagraph (A), the Commission shall define by rule or regulation the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.</i></p> <p><i>“(C) SCOPE OF DESIGNATION- For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.</i></p> <p><i>“(D) CAPITAL- In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a major swap participant.’;</i></p>	

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<p>“(40) MAJOR SECURITY-BASED SWAP PARTICIPANT- The term ‘major security-based swap participant’ has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.</p>	<p>(16) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:  “(32) MAJOR SECURITY-BASED SWAP PARTICIPANT- The term ‘major security-based swap participant’ has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).</p>	
<p>“(41) APPROPRIATE FEDERAL BANKING AGENCY- The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).</p>	<p>(2) by inserting after paragraph (1) the following:  “(2) APPROPRIATE FEDERAL BANKING AGENCY- The term ‘appropriate Federal banking agency’ has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</p>	
<p>“(42) PRUDENTIAL REGULATOR- The term ‘Prudential Regulator’ means--  “(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is--  “(i) a State-chartered bank that is a member of the Federal Reserve System; or  “(ii) a State-chartered branch or agency of a foreign bank;  “(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is--  “(i) a national bank; or  “(ii) a federally chartered branch or agency of a foreign bank; and  “(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.</p>	<p>(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:  “(39) PRUDENTIAL REGULATOR- The term ‘prudential regulator’ means--  “(A) the Office of the Comptroller of the Currency, in the case of--  “(i) any national banking association;  “(ii) any Federal branch or agency of a foreign bank; or  “(iii) any Federal savings association;  “(B) the Federal Deposit Insurance Corporation, in the case of--  “(i) any insured State bank;  “(ii) any foreign bank having an insured branch; or  “(iii) any State savings association;  “(C) the Board of Governors of the Federal Reserve System, in the case of--  “(i) any noninsured State member bank;  “(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);  “(iii) any foreign bank which does not operate an insured branch;  “(iv) any agency or commercial lending company other than a Federal agency; or  “(v) supervisory or regulatory proceedings</p>	

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	<p>arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.); and</p> <p>(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);</p>	
<p>(43) SECURITY-BASED SWAP DEALER- The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.</p>	<p>(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:</p> <p>(43) SECURITY-BASED SWAP DEALER- The term 'security-based swap dealer' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).';</p>	
<p>(44) FOREIGN EXCHANGE FORWARD- The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.</p>	<p>(12) by inserting after paragraph (23) (as redesignated by paragraph (1)) the following:</p> <p>(24) FOREIGN EXCHANGE FORWARD- The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange.</p>	
<p>(45) FOREIGN EXCHANGE SWAP- The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.</p>	<p>(25) FOREIGN EXCHANGE SWAP- The term 'foreign exchange swap' means a transaction that solely involves--</p> <p>(A) an exchange of 2 different currencies on a specific date at a fixed rate that is agreed upon on the inception of the contract covering the exchange; and</p> <p>(B) a reverse exchange of the 2 currencies described in subparagraph (A) at a later date and at a fixed rate that is agreed upon on the inception of the contract covering the exchange.';</p>	
<p>(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT- The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.</p>	<p>(3) ASSOCIATED PERSON OF A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT- The term 'associated person of a security-based swap dealer or major security-based swap participant' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).</p>	

House-passed H.R. 4173	Senate-passed H.R. 4173 (S. 3217 as amended)	Notes
<p>“(47) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT- The term ‘person associated with a swap dealer or major swap participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of a swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a swap dealer or major swap participant, or any employee of a swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of the term other than for purposes of section 4s(b)(6).</p>	<p>“(4) ASSOCIATED PERSON OF A SWAP DEALER OR MAJOR SWAP PARTICIPANT-</p> <p>“(A) IN GENERAL- The term ‘associated person of a swap dealer or major swap participant’ means--</p> <p>“(i) any partner, officer, director, or branch manager of a swap dealer or major swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap dealer or major swap participant);</p> <p>“(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap dealer or major swap participant; and</p> <p>“(iii) any employee of a swap dealer or major swap participant.</p> <p>“(B) EXCLUSION- Other than for purposes of section 4s(b)(6), the term ‘associated person of a swap dealer or major swap participant’ does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.</p>	
<p>“(48) SWAP REPOSITORY- The term ‘swap repository’ means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in or the terms and conditions of swaps entered into by third parties.</p>	<p>“(48) SWAP DATA REPOSITORY- The term ‘swap data repository’ means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties.</p>	
<p>“(49) SWAP EXECUTION FACILITY- The term ‘swap execution facility’ means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract market, including any electronic trade execution or voice brokerage facility.</p>	<p>“(50) SWAP EXECUTION FACILITY- The term ‘swap execution facility’ means a facility in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that--</p> <p>“(A) facilitates the execution of swaps between persons; and</p> <p>“(B) is not a designated contract market.’; and</p> <p>(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking ‘participants’ and inserting ‘participants’.</p>	

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<p>           `(50) DERIVATIVE- The term `derivative' means--            `(A) a contract of sale of a commodity for future delivery; or            `(B) a swap.'.         </p>		
	<p> <i>(3) by inserting after paragraph (6) (as redesignated by paragraph (1)) the following:</i>  <i>`(7) CLEARED SWAP- The term `cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.';</i>  <i>(4) in paragraph (9) (as redesignated by paragraph (1)), by striking `except onions' and all that follows through the period at the end and inserting the following: `except onions (as provided in section 13-1) and motion picture box office receipts (or any index, measure, value, or data related to such receipts), and all services, rights, and interests (except motion picture box office receipts, or any index, measure, value or data related to such receipts) in which contracts for future delivery are presently or in the future dealt in.';</i>  <i>(5) by inserting after paragraph (9) (as redesignated by paragraph (1)) the following:</i>  <i>`(10) COMMODITY POOL-</i>  <i>    `(A) IN GENERAL- The term `commodity pool' means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any--</i>  <i>        `(i) commodity for future delivery, security futures product, or swap;</i>  <i>        `(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);</i>  <i>        `(iii) commodity option authorized under section 4c; or</i>  <i>        `(iv) leverage transaction authorized under section 19.</i>  <i>    `(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term `commodity pool' any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.';</i> </p>	

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	<p>(6) by striking paragraph (11) (as redesignated by paragraph (1)) and inserting the following:</p> <p><i>“(11) COMMODITY POOL OPERATOR-</i></p> <p><i>“(A) IN GENERAL- The term ‘commodity pool operator’ means any person--</i></p> <p><i>“(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interest, including any--</i></p> <p><i>“(I) commodity for future delivery, security futures product, or swap;</i></p> <p><i>“(II) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);</i></p> <p><i>“(III) commodity option authorized under section 4c; or</i></p> <p><i>“(IV) leverage transaction authorized under section 19; or</i></p> <p><i>“(ii) who is registered with the Commission as a commodity pool operator.</i></p> <p><i>“(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool operator’ any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.’;</i></p> <p>(7) in paragraph (12) (as redesignated by paragraph (1)), in subparagraph (A)--</p> <p>(A) in clause (i)--</p> <p>(i) in subclause (I), by striking ‘made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility’ and inserting ‘, security futures product, or swap’;</p> <p>(ii) by redesignating subclauses (II) and (III) as subclauses (III) and (IV);</p>	

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	<p>(iii) by inserting after subclause (I) the following:</p> <p style="padding-left: 40px;">(II) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and</p> <p>(iv) in subclause (IV) (as so redesignated), by striking `or';</p> <p>(B) in clause (ii), by striking the period at the end and inserting a semicolon; and</p> <p>(C) by adding at the end the following:</p> <p style="padding-left: 40px;">(iii) is registered with the Commission as a commodity trading advisor; or</p> <p style="padding-left: 40px;">(iv) the Commission, by rule or regulation, may include if the Commission determines that the rule or regulation will effectuate the purposes of this Act.;</p> <p>(8) in paragraph (17) (as redesignated by paragraph (1)), in subparagraph (A), in the matter preceding clause (i), by striking `paragraph (12)(A)' and inserting `paragraph (18)(A)';</p> <p>(9) in paragraph (18) (as redesignated by paragraph (1))--</p> <p style="padding-left: 20px;">(A) in subparagraph (A)--</p> <p style="padding-left: 40px;">(i) in the matter following clause (vii)(III)--</p> <p style="padding-left: 60px;">(I) by striking `section 1a (11)(A)' and inserting `paragraph (17)(A)'; and</p> <p style="padding-left: 60px;">(II) by striking `\$25,000,000' and inserting `\$50,000,000'; and</p> <p style="padding-left: 40px;">(ii) in clause (xi), in the matter preceding subclause (I), by striking `total assets in an amount' and inserting `amounts invested on a discretionary basis, the aggregate of which is';</p> <p>(10) by striking paragraph (22) (as redesignated by paragraph (1)) and inserting the following:</p> <p>(22) FLOOR BROKER-</p> <p style="padding-left: 20px;">(A) IN GENERAL- The term `floor broker' means any person--</p> <p style="padding-left: 40px;">(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person--</p> <p style="padding-left: 60px;">(I) any commodity for future</p>	

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	<p>delivery, security futures product, or swap; or</p> <p>(II) any commodity option authorized under section 4c; or</p> <p>(ii) who is registered with the Commission as a floor broker.</p> <p>(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term 'floor broker' any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades for any other person if the Commission determines that the rule or regulation will effectuate the purposes of this Act.';</p> <p>(11) by striking paragraph (23) (as redesignated by paragraph (1)) and inserting the following:</p> <p>(23) FLOOR TRADER-</p> <p>(A) IN GENERAL- The term 'floor trader' means any person--</p> <p>(i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account--</p> <p>(I) any commodity for future delivery, security futures product, or swap; or</p> <p>(II) any commodity option authorized under section 4c; or</p> <p>(ii) who is registered with the Commission as a floor trader.</p> <p>(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term 'floor trader' any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of this Act.';</p>	
	<p>(13) by striking paragraph (28) (as redesignated by paragraph (1)) and inserting the following:</p>	

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	<p>(28) FUTURES COMMISSION MERCHANT-</p> <p>(A) IN GENERAL- The term 'futures commission merchant' means an individual, association, partnership, corporation, or trust--</p> <p>(i) that--</p> <p>(I) is engaged in soliciting or in accepting orders for--</p> <p>(aa) the purchase or sale of a commodity for future delivery;</p> <p>(bb) a security futures product;</p> <p>(cc) a swap;</p> <p>(dd) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);</p> <p>(ee) any commodity option authorized under section 4c; or</p> <p>(ff) any leverage transaction authorized under section 19; or</p> <p>(II) is acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and</p> <p>(III) in or in connection with the activities described in subclause (I) or (II), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or</p> <p>(ii) that is registered with the Commission as a futures commission merchant.</p> <p>(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term 'futures commission merchant' any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who</p>	

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	<p>accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.';</p> <p>(14) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking `state' and inserting `State';</p> <p>(15) by striking paragraph (31) (as redesignated by paragraph (1)) and inserting the following:</p> <p>“(31) INTRODUCING BROKER-</p> <p>“(A) IN GENERAL- The term `introducing broker' means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)--</p> <p>“(i) who--</p> <p>“(I) is engaged in soliciting or in accepting orders for--</p> <p>“(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;</p> <p>“(bb) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);</p> <p>“(cc) any commodity option authorized under section 4c; or</p> <p>“(dd) any leverage transaction authorized under section 19; and</p> <p>“(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or</p> <p>“(ii) who is registered with the Commission as an introducing broker.</p> <p>“(B) FURTHER DEFINITION- The Commission, by rule or regulation, may include within, or exclude from, the term `introducing broker' any person who engages in soliciting or accepting orders for any agreement, contract, or transaction subject to this Act, and who does not accept any money, securities, or</p>	

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	<p><i>property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.';</i></p>	
	<p><i>(18) in paragraph (40) (as redesignated by paragraph (1))-- (A) by striking subparagraph (B); (B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively; (C) in subparagraph (C) (as so redesignated), by striking `and'; (D) by inserting after subparagraph (C) (as so redesignated) the following: `D) a swap execution facility registered under section 5h; `E) a swap data repository; and';</i></p>	
	<p><i>(20) in paragraph (46) (as redesignated by paragraph (1)), by striking `subject to section 2(h)(7)' and inserting `subject to section 2(h)(5)';</i></p>	
<p>(b) Authority to Further Define Terms- The Commodity Futures Trading Commission shall adopt a rule further defining the terms `swap', `swap dealer', `major swap participant', and `eligible contract participant' for the purpose of including transactions and entities that have been structured to evade this title.</p>	<p><i>(b) Authority To Define Terms- The Commodity Futures Trading Commission may adopt a rule to define-- (1) the term `commercial risk'; and (2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle. (c) Modification of Definitions- To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms `swap', `swap dealer', `major swap participant', and `eligible contract participant'.</i></p>	
<p>(c) Exemptions- Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: `The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act. Notwithstanding the preceding sentence, the Commodity Futures Trading Commission may exempt from any provision of the Commodity Exchange Act, pursuant to this subsection, an agreement, contract, or transaction that is entered into pursuant to a</p>	<p><i>(d) Exemptions- Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking `except that' and all that follows through the period at the end and inserting the following: `except that-- `A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010-- `i) with respect to-- `I) paragraphs (2), (3), (4), (5), and</i></p>	

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<p>tariff approved by the Federal Energy Regulatory Commission, if the Commodity Futures Trading Commission determines that the exemption would be consistent with the public interest, and shall consider and not unreasonably deny any request made by the Federal Energy Regulatory Commission for such an exemption.'</p>	<p>(7), clause (vii)(III) of paragraph (17), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and          (II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note); and          (ii) in subsection (c) of section 111 and section 132; and          (B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) if the Commission determines that the exemption would be consistent with the public interest.'</p>	
	<p>(e) Conforming Amendments--          (1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended--          (A) in item (cc)--              (i) in subitem (AA), by striking 'section 1a(20)' and inserting 'section 1a'; and              (ii) in subitem (BB), by striking 'section 1a(20)' and inserting 'section 1a'; and          (B) in item (dd), by striking 'section 1a(12)(A)(ii)' and inserting 'section 1a(18)(A)(ii)'.          (2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking 'section 1a(6)' and inserting 'section 1a'.          (3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o-1(a)(1)) is amended by striking 'section 1a(4)' and inserting 'section 1a(9)'.          (4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking 'section 1a(4)' and inserting 'section 1a(9)'.          (5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking 'section 1a(4)' and inserting 'section 1a(9)'.          (6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a-</p>	

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	<p><i>1(a) is amended, in the matter preceding paragraph (1), by striking `section 1a(9)' and inserting `section 1a'.</i></p> <p><i>(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(2)(B)) is amended by striking `section 1a(4)' and inserting `section 1a(9)'.</i></p> <p><i>(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended--</i></p> <p style="padding-left: 40px;"><i>(A) in subclause (I), by striking `section 1a(12)(B)(ii)' and inserting `section 1a(18)(B)(ii)'; and</i></p> <p style="padding-left: 40px;"><i>(B) in subclause (II), by striking `section 1a(12)' and inserting `section 1a(18)'.</i></p> <p><i>(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended--</i></p> <p style="padding-left: 40px;"><i>(A) in section 402--</i></p> <p style="padding-left: 80px;"><i>(i) in subsection (a)(7), by striking `section 1a(20)' and inserting `section 1a';</i></p> <p style="padding-left: 80px;"><i>(ii) in subsection (b)(2), by striking `section 1a(12)' and inserting `section 1a';</i></p> <p style="padding-left: 80px;"><i>(iii) in subsection (c), by striking `section 1a(4)' and inserting `section 1a'; and</i></p> <p style="padding-left: 80px;"><i>(iv) in subsection (d)--</i></p> <p style="padding-left: 120px;"><i>(I) in the matter preceding paragraph (1), by striking `section 1a(4)' and inserting `section 1a(9)';</i></p> <p style="padding-left: 120px;"><i>(II) in paragraph (1)--</i></p> <p><i>(aa) in subparagraph (A), by striking `section 1a(12)' and inserting `section 1a'; and</i></p> <p><i>(bb) in subparagraph (B), by striking `section 1a(33)' and inserting `section 1a';</i></p> <p style="padding-left: 40px;"><i>(III) in paragraph (2)--</i></p> <p><i>(aa) in subparagraph (A), by striking `section 1a(10)' and inserting `section 1a';</i></p> <p><i>(bb) in subparagraph (B), by striking `section 1a(12)(B)(ii)' and inserting `section 1a(18)(B)(ii)';</i></p> <p><i>(cc) in subparagraph (C), by striking `section 1a(12)' and inserting `section 1a(18)'; and</i></p>	

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	<p><i>(dd) in subparagraph (D), by striking `section 1a(13)' and inserting `section 1a'; and</i></p> <p><i>(B) in section 404(1), by striking `section 1a(4)' and inserting `section 1a'.</i></p>	
<p><b>SEC. 3102. JURISDICTION.</b></p> <p>(a) Exclusive Jurisdiction- Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended--</p> <p>(1) in the 1st sentence of subparagraph (A)--</p> <p>(A) by striking `(c) through (i)' and inserting `(c) and (f)';</p> <p>(B) by inserting `swaps, or' before `contracts of sale';</p> <p>(C) by striking `derivatives transaction execution facility' and inserting `swap execution facility'; and</p> <p>(D) by striking `5a' and inserting `5h'; and</p> <p>(2) by adding at the end the following:</p> <p>(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Derivative Markets Transparency and Accountability Act of 2009 with regard to security-based swap agreements as defined pursuant to section 3002(e) of such Act, and security-based swaps.</p> <p>(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).</p> <p>(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is--</p> <p>(I) not executed, traded, or cleared on a registered entity or trading facility; and</p> <p>(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.</p> <p>(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in this subparagraph shall limit or affect any</p>	<p><b>SEC. 722. JURISDICTION.</b></p> <p>(a) Exclusive Jurisdiction- Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence--</p> <p>(1) by inserting `the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and' after `otherwise provided in';</p> <p>(2) by striking `(c) through (i) of this section' and inserting `(c) and (f)';</p> <p>(3) by striking `contracts of sale' and inserting `swaps or contracts of sale'; and</p> <p>(4) by striking `or derivatives transaction execution facility registered pursuant to section 5 or 5a' and inserting `pursuant to section 5'.</p> <p>(b) Regulation of Swaps Under Federal and State Law- Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:</p> <p>(h) Regulation of Swaps as Insurance Under State Law- A swap--</p> <p>(1) shall not be considered to be insurance; and</p> <p>(2) may not be regulated as an insurance contract under the law of any State.'.</p> <p>(c) Agreements, Contracts, and Transactions Traded on an Organized Exchange- Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended--</p> <p>(1) in clause (i), by striking `or' at the end;</p> <p>(2) by redesignating clause (ii) as clause (iii); and</p> <p>(3) by inserting after clause (i) the following:</p> <p>(ii) a swap; or'.</p> <p>(d) Applicability- Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:</p> <p>(i) Applicability- The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities--</p>	

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<p>statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).'</p> <p>(b) Additions- Section 2(c)(2)(A) of such Act (7 U.S.C. 2(c)(2)(A)) is amended--</p> <p>(1) in clause (i) by striking `or' at the end;</p> <p>(2) by redesignating clause (ii) as clause (iii); and</p> <p>(3) by inserting after clause (i) the following:</p> <p style="padding-left: 40px;">`(ii) a swap; or'.</p> <p>(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended--</p> <p>(1) in paragraph (1)(B), by inserting `(3)' after `paragraph (2)';</p> <p>(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:</p> <p style="padding-left: 40px;">`(A) a swap; and</p> <p style="padding-left: 40px;">`(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c) or 2(f) of this Act or title IV of the Commodity Futures Modernization Act of 2000 or exempted under section 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).'; and</p> <p>(3) by adding at the end the following:</p> <p style="padding-left: 40px;">`(3) A swap may not be regulated as an insurance contract under State law.</p> <p style="padding-left: 40px;">`(4) The provisions of this Act relating to swaps that were enacted by the Derivative Markets Transparency and Accountability Act of 2009, including any rule or regulation thereunder, shall not apply to activities outside the United States unless those activities--</p> <p style="padding-left: 80px;">`(A) have a direct and significant connection with activities in or effect on United States commerce; or</p> <p style="padding-left: 80px;">`(B) contravene such rules or regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Derivative Markets Transparency and Accountability Act of 2009.'</p> <p>(d) Nothing in the Derivative Markets Transparency and Accountability Act of 2009 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Derivative Markets Transparency</p>	<p><i>`(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or</i></p> <p><i>`(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.'</i></p>	

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and Accountability Act of 2009.		
<p><b>SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.</b></p> <p>(a) Clearing and Execution Transparency Requirements-</p> <p>(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (d), (e), (g), and (h).</p> <p>(2)(A) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act.</p> <p>(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating subject to paragraphs</p>	<p><b>SEC. 723. CLEARING.</b></p> <p>(a) Clearing Requirement-</p> <p>(1) <i>IN GENERAL</i>- Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended--</p> <p>(A) by striking subsections (d), (e), (g), and (h); and</p> <p>(B) by redesignating subsection (i) as subsection (g).</p>	
<p>(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:</p> <p>(d) Swaps- Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j), and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.</p>	<p>(2) <i>SWAPS; LIMITATION ON PARTICIPATION</i>- Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:</p> <p>(d) Swaps- Nothing in this Act (other than subparagraphs (A), (B), (C), and (D) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.</p>	
<p>(e) Limitation on Participation- It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on or subject to the rules of a board of trade designated as a contract market under section 5.'</p>	<p>(e) Limitation on Participation- It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.'</p>	
<p>(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:</p> <p>(j) Clearing Requirement-</p> <p>(1) <i>IN GENERAL</i>-</p> <p>(A) <i>STANDARD FOR CLEARING</i>- A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has</p>	<p>(3) <i>MANDATORY CLEARING OF SWAPS</i>- Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:</p> <p>(h) Clearing Requirement-</p> <p>(1) <i>SUBMISSION</i>-</p> <p>(A) <i>IN GENERAL</i>- Except as provided in paragraphs (9) and (10), any person who is a party to a swap shall</p>	

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<p>determined under paragraph (2)(B)(ii) that the swap is required to be cleared.</p> <p>“(B) OPEN ACCESS- The rules of a derivatives clearing organization described in subparagraph (A) shall--</p> <p>    “(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and</p> <p>    “(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.</p>	<p><i>submit such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under section 5b(j) of this Act.</i></p> <p>“(B) OPEN ACCESS- The rules of a registered derivatives clearing organization shall--</p> <p>    “(i) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and</p> <p>    “(ii) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5(b).</p>	
<p>“(2) COMMISSION REVIEW-</p> <p>    “(A) COMMISSION-INITIATED REVIEW-</p> <p>        “(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.</p> <p>        “(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).</p> <p>    “(B) SWAP SUBMISSIONS-</p> <p>        “(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.</p> <p>        “(ii) The Commission shall--</p> <p>            “(I) make available to the public any submission received under clause (i);</p> <p>            “(II) review each submission made under clause (i), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be</p>	<p>“(2) COMMISSION APPROVAL-</p> <p>    “(A) IN GENERAL- A derivatives clearing organization shall submit to the Commission for prior approval any group, category, type, or class of swaps that the derivatives clearing organization seeks to accept for clearing, which submission the Commission shall make available to the public.</p> <p>    “(B) DEADLINE- The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph.</p> <p>    “(C) APPROVAL- The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with section 5b(c)(2). The Commission shall not approve any such request if the Commission does not make such finding.</p> <p>    “(D) RULES- The Commission shall adopt rules for a derivatives clearing organization's submission for approval, pursuant to this paragraph, of any group, category, type, or class of swaps that the derivative clearing organization seeks to accept for clearing</p>	

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<p>cleared; and</p> <p>`(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.</p> <p>`(C) DEADLINE- The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.</p> <p>`(D) DETERMINATION-</p> <p>`(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).</p> <p>`(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:</p> <p>`(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.</p> <p>`(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.</p> <p>`(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.</p> <p>`(IV) The effect on competition, including appropriate fees and charges applied to clearing.</p>		

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<p>           `(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.            `(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.            `(E) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.         </p>		
<p>           `(3) STAY OF CLEARING REQUIREMENT-            `(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.            `(B) DEADLINE- The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.            `(C) DETERMINATION- Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may--            `(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or         </p>	<p> <i>               `(3) STAY OF CLEARING REQUIREMENT- At any time after issuance of an approval pursuant to paragraph (2):                `(A) REVIEW PROCESS- The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap, or the group, category, type, or class of swaps, and the clearing arrangement.                `(B) DEADLINE- The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or the group, category, type, or class of swaps, agrees to an extension of the time limitation established under this subparagraph.                `(C) DETERMINATION- Upon completion of the review undertaken pursuant to subparagraph (A)--                `(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or the group,             </i> </p>	

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<p>group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or</p> <p>(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.</p> <p>(D) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.</p>	<p>category, type, or class of swaps, must be cleared pursuant to this subsection if the Commission finds that such clearing--</p> <p>(I) is consistent with section 5b(c)(2); and</p> <p>(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this Act;</p> <p>(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the swap, or the group, category, type, or class of swaps; or</p> <p>(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then it shall still be permissible to clear such swap, or the group, category, type, or class of swaps.</p> <p>(D) RULES- The Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type, or class of swaps that the Commission has accepted for clearing.</p>	
	<p>(4) SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING-</p> <p>(A) RULEMAKING- The Commission shall adopt rules to further identify any group, category, type, or class of swaps not submitted for approval under paragraph (2) that the Commission deems should be accepted for clearing. In adopting such rules, the Commission shall take into account the following factors:</p> <p>(i) The extent to which any of the terms of the group, category, type, or class of swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.</p> <p>(ii) The volume of transactions in the group, category, type, or class of swaps.</p> <p>(iii) The extent to which the terms of the group, category, type, or class of swaps are similar to the terms of other agreements, contracts, or transactions that are cleared.</p>	

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	<p>(iv) Whether any differences in the terms of the group, category, type, or class of swaps, compared to other agreements, contracts, or transactions that are cleared, are of economic significance.</p> <p>(v) Whether a derivatives clearing organization is prepared to clear the group, category, type, or class of swaps and such derivatives clearing organization has in place effective risk management systems.</p> <p>(vi) Any other factors the Commission determine to be appropriate.</p> <p>(B) OTHER DESIGNATIONS- At any time after the adoption of the rules required under subparagraph (A), the Commission may separately designate a particular swap or class of swaps as subject to the clearing requirement in paragraph (1), taking into account the factors described in clauses (i) through (vi) of subparagraph (A) and the rules adopted under such subparagraph.</p> <p>(C) IN GENERAL- In accordance with subparagraph (A), the Commission shall, consistent with the public interest, adopt rules under the expedited process described in subparagraph (D) to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.</p> <p>(D) EXPEDITED RULEMAKING AUTHORITY-</p> <p>(i) PROCEDURE- The promulgation of regulations under subparagraph (A) may be made without regard to--</p> <p>(I) the notice and comment provisions of section 553 of title 5, United States Code; and</p> <p>(II) chapter 35 of title 44, United States Code (commonly known as the 'Paperwork Reduction Act').</p> <p>(ii) AGENCY RULEMAKING- In carrying out subparagraph (A), the Commission shall use the authority provided under section 808 of title 5, United States Code.</p>	
<p>(4) PREVENTION OF EVASION- The Commission may prescribe rules under this subsection, or issue interpretations of</p>	<p>(5) PREVENTION OF EVASION-</p> <p>(A) IN GENERAL- The Commission may prescribe</p>	

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<p>the rules, as necessary to prevent evasions of this subsection.</p>	<p><i>rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.</i></p> <p><b>(B) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS-</b> <i>To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall--</i></p> <ul style="list-style-type: none"> <li><i>(i) investigate the relevant facts and circumstances;</i></li> <li><i>(ii) within 30 days issue a public report containing the results of the investigation; and</i></li> <li><i>(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.</i></li> </ul> <p><b>(C) EFFECT ON AUTHORITY-</b> <i>Nothing in this paragraph shall--</i></p> <ul style="list-style-type: none"> <li><i>(i) authorize the Commission to require a derivatives clearing organization to list for clearing a swap, group, category, type, or class of swaps if the clearing of the swap, group, category, type, or class of swaps would adversely affect the business operations of the derivatives clearing organization, threaten the financial integrity of the derivatives clearing organization, or pose a systemic risk to the derivatives clearing organization; and</i></li> <li><i>(ii) affect the authority of the Commission to enforce the open access provisions of paragraph (1) with respect to a swap, group, category, type, or class of swaps that is listed for clearing by a derivatives clearing organization.</i></li> </ul>	
<p><b>(5) REQUIRED REPORTING-</b> <b>(A) IN GENERAL-</b> All swaps that are not accepted</p>	<p><b>(6) REQUIRED REPORTING-</b> <b>(A) BOTH COUNTERPARTIES-</b> Both counterparties</p>	

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<p>for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.</p> <p>“(B) SWAP DEALER DESIGNATION- With regard to swaps where only 1 counterparty is a swap dealer, the swap dealer shall report the swap as required by this paragraph.</p>	<p><i>to a swap that is not cleared by any derivatives clearing organization shall report such a swap either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.</i></p> <p><i>“(B) TIMING- Counterparties to a swap shall submit the reports required under subparagraph (A) not later than such time period as the Commission may by rule or regulation prescribe.</i></p>	
<p>“(6) REPORTING TRANSITION RULES- Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:</p> <p>“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and</p> <p>“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of-</p> <p style="padding-left: 40px;">“(i) 90 days after such effective date; or</p> <p style="padding-left: 40px;">“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.</p> <p>“(7) CLEARING TRANSITION RULES-</p> <p>“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(A).</p> <p>“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(B).</p>	<p>“(7) TRANSITION RULES-</p> <p>“(A) REPORTING TRANSITION RULES- Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:</p> <p style="padding-left: 40px;">“(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION- Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.</p> <p style="padding-left: 40px;">“(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION- Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than the later of-</p> <p style="padding-left: 80px;">“(I) 90 days after such effective date; or</p> <p style="padding-left: 80px;">or</p> <p style="padding-left: 80px;">“(II) such other time after entering into the swap as the Commission may prescribe by rule or regulation.</p> <p>“(B) CLEARING TRANSITION RULES-</p> <p style="padding-left: 40px;">“(i) SWAPS ENTERED INTO BEFORE THE DATE OF THE ENACTMENT OF THIS SUBSECTION- Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(i).</p> <p style="padding-left: 40px;">“(ii) SWAPS ENTERED INTO BEFORE</p>	

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	<p><i>APPLICATION OF CLEARING REQUIREMENT- Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(ii).</i></p>	
	<p><i>“(8) TRADE EXECUTION-</i>  <i>“(A) IN GENERAL- With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall--</i>  <i>“(i) execute the transaction on a board of trade designated as a contract market under section 5; or</i>  <i>“(ii) execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.</i>  <i>“(B) EXCEPTION- The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or a swap transactions where a commercial end user opts to use the clearing exemption under paragraph (9).</i>  <i>“(9) REQUIRED EXEMPTION- Subject to paragraph (4), the Commission shall exempt a swap from the requirements of paragraphs (1) and (8) and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap from clearing.</i></p>	
<p><i>“(8) EXCEPTIONS-</i>  <i>“(A) IN GENERAL- The requirements of paragraph (1) shall not apply to a swap if one of the counterparties to the swap--</i>  <i>“(i) is not a swap dealer or major swap participant;</i>  <i>“(ii) is using swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and</i></p>	<p><i>“(10) END USER CLEARING EXEMPTION-</i>  <i>“(A) DEFINITION OF COMMERCIAL END USER-</i>  <i>“(i) IN GENERAL- In this paragraph, the term ‘commercial end user’ means any person other than a financial entity described in clause (ii) who, as its primary business activity, owns, uses, produces, processes, manufactures, distributes, merchandises, or markets goods, services, or commodities</i></p>	

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<p>(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.</p>	<p><i>(which shall include but not be limited to coal, natural gas, electricity, ethanol, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.</i></p> <p><i>(ii) FINANCIAL ENTITY- The term 'financial entity' means--</i></p> <p><i>(I) a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant;</i></p> <p><i>(II) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956;</i></p> <p><i>(III) a person predominantly engaged in activities that are financial in nature;</i></p> <p><i>(IV) a commodity pool or a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)); or</i></p> <p><i>(V) a person that is registered or required to be registered with the Commission.</i></p> <p><i>(B) END USER CLEARING EXEMPTION-</i></p> <p><i>(i) IN GENERAL- Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (1), and 1 of the counterparties to the swap is a commercial end user, that counterparty--</i></p> <p><i>(I)(aa) may elect not to clear the swap, as required under paragraph (1); or</i></p> <p><i>(bb) may elect to require clearing of the swap; and</i></p> <p><i>(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.</i></p>	

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	<p>(ii) <i>LIMITATION- A commercial end user may only make an election under clause (i) if the end user is using the swap to hedge its own commercial risk.</i></p> <p>(C) <i>TREATMENT OF AFFILIATES-</i></p> <p>(i) <i>IN GENERAL- An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the commercial end user) may make an election under subparagraph (B)(i) only if the affiliate, acting on behalf of the commercial end user and as an agent, uses the swap to hedge or mitigate the commercial risk of the commercial end user parent or other affiliate of the commercial end user that is not a financial entity.</i></p> <p>(ii) <i>PROHIBITION RELATING TO CERTAIN AFFILIATES- An affiliate of a commercial end user shall not use the exemption under subparagraph (B) if the affiliate is--</i></p> <ul style="list-style-type: none"> <li>(I) <i>a swap dealer;</i></li> <li>(II) <i>a security-based swap dealer;</i></li> <li>(III) <i>a major swap participant;</i></li> <li>(IV) <i>a major security-based swap participant;</i></li> <li>(V) <i>an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a-3(c));</i></li> <li>(VI) <i>a commodity pool;</i></li> <li>(VII) <i>a bank holding company with over \$50,000,000,000 in consolidated assets; or</i></li> <li>(VIII) <i>an affiliate of any entity described in subclauses (I) through (VII).</i></li> </ul>	

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<p>^(B) ABUSE OF EXCEPTION- The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.</p>	<p>^(D) ABUSE OF EXEMPTION- The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).</p>	
<p>^(C) OPTION TO CLEAR- The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).</p>	<p>^(E) OPTION TO CLEAR-</p> <p>^(i) SWAPS REQUIRED TO BE CLEARED ENTERED INTO WITH A FINANCIAL ENTITY- With respect to any swap that is required to be cleared by a derivatives clearing organization and entered into by a swap dealer or a major swap participant with a financial entity, the financial entity shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.</p> <p>^(ii) SWAPS NOT REQUIRED TO BE CLEARED ENTERED INTO WITH A FINANCIAL ENTITY OR COMMERCIAL END USER- With respect to any swap that is not required to be cleared by a derivatives clearing organization and entered into by a swap dealer or a major swap participant with a financial entity or commercial end user, the financial entity or commercial end user--</p> <p>^(I) may elect to require clearing of the swap; and</p> <p>^(II) shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.'</p>	
<p>^(k) Execution Transparency-</p> <p>^(1) REQUIREMENT- A swap that is subject to the clearing requirement of subsection (j) shall not be traded except on or through a board of trade designated as a contract market under section 5, or on or through a swap execution facility registered under section 5h, that makes the swap available for trading.</p> <p>^(2) EXCEPTIONS- The requirement of paragraph (1) shall not apply to a swap if no designated contract market or swap</p>		

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<p>execution facility makes the swap available for trading.</p> <p>`(3) AGRICULTURAL SWAPS- No person shall offer to enter into, enter into or confirm the execution of, any swap in an agricultural commodity (as defined by the Commission) that is subject to paragraphs (1) and (2) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.</p> <p>`(4) REQUIRED REPORTING- If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).</p> <p>`(5) EXCHANGE TRADING- In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.'</p>		
	<p><i>(b) Commodity Exchange Act- Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by adding at the end the following:</i></p> <p><i>`(j) Audit Committee Approval- Exemptions from the requirements of subsection (h)(2)(F) to clear a swap and subsection (b) to trade a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if the issuer's audit committee has reviewed and approved its decision to enter into swaps that are subject to such exemptions.'</i></p> <p><i>(c) Grandfather Provisions-</i></p> <p><i>(1) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES- Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).</i></p> <p><i>(2) CONSIDERATION; AUTHORITY OF COMMODITY FUTURES TRADING COMMISSION- The Commodity Futures Trading Commission--</i></p>	

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	<p>(A) shall consider any petition submitted under subparagraph (A) in a prompt manner; and  (B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.</p> <p>(3) <b>AGRICULTURAL SWAPS-</b>  (A) <b>IN GENERAL-</b> Except as provided in paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).  (B) <b>EXCEPTION-</b> Notwithstanding paragraph (1), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.</p> <p>(4) <b>REQUIRED REPORTING-</b> If the exception described in paragraph (2) applies, and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).</p>	
<p>(b) Derivatives Clearing Organizations-  (1) Subsections (a) and (b) of section 5b of such Act (7 U.S.C. 7a-1) are amended to read as follows:  (a) Registration Requirement-  (1) <b>IN GENERAL-</b> It shall be unlawful for any entity, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) of this Act with respect to--  (A) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option</p>	<p><b>SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.</b></p> <p>(a) <b>Registration Requirement-</b> Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by striking subsections (a) and (b) and inserting the following:  (a) <b>Registration Requirement-</b>  (1) <b>IN GENERAL-</b> Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to--  (A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option</p>	

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<p>is--</p> <ul style="list-style-type: none"> <li>^(i) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or</li> <li>^(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or</li> <li>^(B) a swap.</li> </ul>	<p>on a commodity, in each case, unless the contract or option is--</p> <ul style="list-style-type: none"> <li>^(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or</li> <li>^(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or</li> <li>^(B) a swap.</li> </ul> <p>^(2) EXCEPTION- Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.</p> <p>^(b) Voluntary Registration- A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.'</p> <p>(b) Registration for Depository Institutions and Clearing Agencies; Exemptions; Compliance Officer; Annual Reports- Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by adding at the end the following:</p> <p>^(g) Required Registration for Depository Institutions and Clearing Agencies- A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also licensed as a depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).</p>	
<p>^(2) EXISTING BANKS AND CLEARING AGENCIES- A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if</p>	<p>^(h) Existing Depository Institutions and Clearing Agencies-</p> <p>^(1) IN GENERAL- A depository institution or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection--</p> <ul style="list-style-type: none"> <li>^(A) the depository institution cleared swaps as a multilateral clearing organization; or</li> <li>^(B) the clearing agency cleared swaps.</li> </ul> <p>^(i) the compliance of the derivatives clearing organization of the compliance officer with</p>	

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<p>the conversion is not in contravention of applicable State law.            `(b) Voluntary Registration- A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.'</p>	<p><i>respect to this Act (including regulations); and</i>  <i>`(ii) each policy and procedure of the derivatives clearing organization of the compliance officer (including the code of ethics and conflict of interest policies of the derivatives clearing organization).</i>  <i>`(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--</i>  <i>`(i) accompany each appropriate financial report of the derivatives clearing organization that is required to be furnished to the Commission pursuant to this section; and</i>  <i>`(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.'</i></p>	
	<p><i>`(2) CONVERSION OF DEPOSITORY INSTITUTIONS- A depository institution to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the depository institution, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.</i>  <i>`(i) Exemptions- The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, requiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.</i>  <i>`(j) Designation of Chief Compliance Officer-</i>  <i>`(1) IN GENERAL- Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.</i>  <i>`(2) DUTIES- The chief compliance officer shall--</i>  <i>`(A) report directly to the board or to the senior officer of the derivatives clearing organization;</i>  <i>`(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);</i></p>	

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	<p><i>^(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;</i></p> <p><i>^(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</i></p> <p><i>^(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;</i></p> <p><i>^(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any--</i></p> <ul style="list-style-type: none"> <li><i>^(i) compliance office review;</i></li> <li><i>^(ii) look-back;</i></li> <li><i>^(iii) internal or external audit finding;</i></li> <li><i>^(iv) self-reported error; or</i></li> <li><i>^(v) validated complaint; and</i></li> </ul> <p><i>^(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i></p> <p><b>^(3) ANNUAL REPORTS-</b></p> <p><i>^(A) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</i></p>	
<p>(2) Section 5b of such Act (7 U.S.C. 7a-1) is amended by adding at the end the following:</p> <p><i>^(g) Rules- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection.</i></p> <p><i>^(h) Exemptions-</i></p> <p><i>^(1) IN GENERAL- The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by a</i></p>		

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<p>Prudential Regulator or the appropriate governmental authorities in the organization's home country.</p> <p>(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.</p>		
<p>(i) Designation of Compliance Officer-</p> <p>(1) IN GENERAL- Each derivatives clearing organization shall designate an individual to serve as a compliance officer.</p> <p>(2) DUTIES- The compliance officer--</p> <p>(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and</p> <p>(B) shall--</p> <p>(i) review compliance with the core principles in section 5b(c)(2).</p> <p>(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;</p> <p>(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and</p> <p>(iv) ensure compliance with this Act and the rules and regulations issued under this Act;</p> <p>and</p> <p>(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.</p> <p>(3) ANNUAL REPORTS REQUIRED- The compliance officer shall annually prepare and sign a report on the compliance of the</p>		

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<p>derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.'</p>		
<p>(3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:          `(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS-          `(A) IN GENERAL- To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.</p>	<p><i>(c) Core Principles for Derivatives Clearing Organizations- Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)) is amended by striking paragraph (2) and inserting the following:</i>  <i>(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS-</i>  <i>(A) COMPLIANCE-</i>  <i>(i) IN GENERAL- To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</i>  <i>(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION- Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.</i></p>	
<p>`(B) FINANCIAL RESOURCES-          `(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.          `(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would--          `(I) enable the organization to meet</p>	<p>`(B) FINANCIAL RESOURCES-          `(i) IN GENERAL- Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.          `(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES- Each derivatives clearing</p>	

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<p>the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and</p> <p>(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.</p>	<p><i>organization shall possess financial resources that, at a minimum, exceed the total amount that would--</i></p> <p><i>(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and</i></p> <p><i>(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).</i></p>	
<p>(C) PARTICIPANT AND PRODUCT ELIGIBILITY-</p> <p>(i) The derivatives clearing organization shall establish--</p> <p>(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the organization) for members of and participants in the organization; and</p> <p>(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.</p> <p>(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.</p> <p>(iii) The participation and membership requirements of the derivatives clearing organization shall be objective, publicly disclosed, and permit fair and open access.</p>	<p>(C) PARTICIPANT AND PRODUCT ELIGIBILITY-</p> <p>(i) <i>IN GENERAL- Each derivatives clearing organization shall establish--</i></p> <p><i>(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and</i></p> <p><i>(II) appropriate standards for determining the eligibility of agreements, contracts, and transactions submitted to the derivatives clearing organization for clearing.</i></p> <p><i>(ii) REQUIRED PROCEDURES- Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.</i></p> <p><i>(iii) REQUIREMENTS- The participation</i></p>	

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	<p style="text-align: center;"><i>and membership requirements of each derivatives clearing organization shall--</i></p> <ul style="list-style-type: none"> <li><i>^(I) be objective;</i></li> <li><i>^(II) be publicly disclosed; and</i></li> <li><i>^(III) permit fair and open access.</i></li> </ul>	
<p>^(D) RISK MANAGEMENT-</p> <ul style="list-style-type: none"> <li>^(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.</li> <li>^(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.</li> <li>^(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.</li> <li>^(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.</li> <li>^(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.</li> </ul>	<p>^(D) RISK MANAGEMENT-</p> <ul style="list-style-type: none"> <li>^(i) <i>IN GENERAL-</i> Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.</li> <li>^(ii) <i>MEASUREMENT OF CREDIT EXPOSURE-</i> Each derivatives clearing organization shall-- <ul style="list-style-type: none"> <li>^(I) <i>not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and</i></li> <li>^(II) <i>monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.</i></li> </ul> </li> <li>^(iii) <i>LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS-</i> Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that-- <ul style="list-style-type: none"> <li>^(I) <i>the operations of the derivatives clearing organization would not be disrupted; and</i></li> <li>^(II) <i>nondefaulting members or</i></li> </ul> </li> </ul>	

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	<p style="text-align: center;"><i>participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.</i></p> <p><i>^(iv) MARGIN REQUIREMENTS- The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.</i></p> <p><i>^(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS- Each model and parameter used in setting margin requirements under clause (iv) shall be--</i></p> <p style="padding-left: 40px;"><i>^(I) risk-based; and</i></p> <p style="padding-left: 40px;"><i>^(II) reviewed on a regular basis.</i></p>	
<p><i>^(E) SETTLEMENT PROCEDURES- The derivatives clearing organization shall--</i></p> <p style="padding-left: 20px;"><i>^(i) complete money settlements on a timely basis, and not less than once each business day;</i></p> <p style="padding-left: 20px;"><i>^(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;</i></p> <p style="padding-left: 20px;"><i>^(iii) ensure money settlements are final when effected;</i></p> <p style="padding-left: 20px;"><i>^(iv) maintain an accurate record of the flow of funds associated with each money settlement;</i></p> <p style="padding-left: 20px;"><i>^(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and</i></p> <p style="padding-left: 20px;"><i>^(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.</i></p>	<p><i>^(E) SETTLEMENT PROCEDURES- Each derivatives clearing organization shall--</i></p> <p style="padding-left: 20px;"><i>^(i) complete money settlements on a timely basis (but not less frequently than once each business day);</i></p> <p style="padding-left: 20px;"><i>^(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);</i></p> <p style="padding-left: 20px;"><i>^(iii) ensure that money settlements are final when effected;</i></p> <p style="padding-left: 20px;"><i>^(iv) maintain an accurate record of the flow of funds associated with each money settlement;</i></p> <p style="padding-left: 20px;"><i>^(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;</i></p> <p style="padding-left: 20px;"><i>^(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and</i></p> <p style="padding-left: 20px;"><i>^(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.</i></p>	

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<p>^(F) TREATMENT OF FUNDS-</p> <p>^(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.</p> <p>^(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.</p> <p>^(iii) Assets and funds invested by the derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.</p>	<p>^(F) TREATMENT OF FUNDS-</p> <p>^(i) <i>REQUIRED STANDARDS AND PROCEDURES-</i> Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.</p> <p>^(ii) <i>HOLDING OF FUNDS AND ASSETS-</i> Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.</p> <p>^(iii) <i>PERMISSIBLE INVESTMENTS-</i> Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.</p>	
<p>^(G) DEFAULT RULES AND PROCEDURES-</p> <p>^(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.</p> <p>^(ii) The default procedures of the derivatives clearing organization shall be clearly stated, and they shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting the obligations of the organization.</p> <p>^(iii) The default procedures shall be publicly available.</p>	<p>^(G) DEFAULT RULES AND PROCEDURES-</p> <p>^(i) <i>IN GENERAL-</i> Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants--</p> <p>^(I) become insolvent; or</p> <p>^(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.</p> <p>^(ii) <i>DEFAULT PROCEDURES-</i> Each derivatives clearing organization shall--</p> <p>^(I) clearly state the default procedures of the derivatives clearing organization;</p> <p>^(II) make publicly available the default rules of the derivatives clearing organization; and</p> <p>^(III) ensure that the derivatives clearing organization may take timely action--</p>	

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	<p><i>^(aa) to contain losses and liquidity pressures; and</i></p> <p><i>^(bb) to continue meeting each obligation of the derivatives clearing organization.</i></p>	
<p><i>^(H) RULE ENFORCEMENT- The derivatives clearing organization shall--</i></p> <p><i>^(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the organization and for resolution of disputes; and</i></p> <p><i>^(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of rules of the organization.</i></p>	<p><i>^(H) RULE ENFORCEMENT- Each derivatives clearing organization shall--</i></p> <p><i>^(i) maintain adequate arrangements and resources for--</i></p> <p><i>^(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and</i></p> <p><i>^(II) the resolution of disputes;</i></p> <p><i>^(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and</i></p> <p><i>^(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).</i></p>	
<p><i>^(I) SYSTEM SAFEGUARDS- The derivatives clearing organization shall--</i></p> <p><i>^(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;</i></p> <p><i>^(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and</i></p> <p><i>^(iii) periodically conduct tests to verify that</i></p>	<p><i>^(I) SYSTEM SAFEGUARDS- Each derivatives clearing organization shall--</i></p> <p><i>^(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;</i></p> <p><i>^(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for--</i></p> <p><i>^(I) the timely recovery and resumption of operations of the derivatives clearing organization; and</i></p>	

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<p>backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.</p>	<p><i>“(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and “(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.</i></p>	
<p><i>“(J) REPORTING-</i> The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.</p>	<p><i>“(J) REPORTING-</i> Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.</p>	
<p><i>“(K) RECORDKEEPING-</i> The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.</p>	<p><i>“(K) RECORDKEEPING-</i> Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization-- <i>“(i) in a form and manner that is acceptable to the Commission; and “(ii) for a period of not less than 5 years.</i></p>	
<p><i>“(L) PUBLIC INFORMATION-</i> <i>“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization. “(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants. “(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning-- “(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization; “(II) clearing and other fees that the organization charges the members of,</i></p>	<p><i>“(L) PUBLIC INFORMATION-</i> <i>“(i) IN GENERAL-</i> Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization. <i>“(ii) AVAILABILITY OF INFORMATION-</i> Each derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants. <i>“(iii) PUBLIC DISCLOSURE-</i> Each derivatives clearing organization shall disclose publicly and to the Commission information concerning-- <i>“(I) the terms and conditions of each contract, agreement, and other</i></p>	

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<p>and participants in, the organization;            `(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;            `(IV) other information relevant to participation in the settlement and clearing activities of the organization; and            `(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.</p>	<p><i>transaction cleared and settled by the derivatives clearing organization;            `(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;            `(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;            `(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and            `(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.</i></p>	
<p>`(M) INFORMATION-SHARING- The derivatives clearing organization shall--            `(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and            `(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.</p>	<p><i>`(M) INFORMATION-SHARING- Each derivatives clearing organization shall--            `(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and            `(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.</i></p>	
<p>`(N) ANTITRUST CONSIDERATIONS- The derivatives clearing organization shall avoid--            `(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or            `(ii) imposing any material anticompetitive burden.</p>	<p><i>`(N) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this Act, a derivatives clearing organization shall not--            `(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or            `(ii) impose any material anticompetitive burden.</i></p>	
<p>`(O) GOVERNANCE FITNESS STANDARDS-            `(i) The derivatives clearing organization shall</p>	<p><i>`(O) GOVERNANCE FITNESS STANDARDS-            `(i) GOVERNANCE ARRANGEMENTS- Each</i></p>	

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<p>establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.</p> <p>(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this subparagraph.</p>	<p><i>derivatives clearing organization shall establish governance arrangements that are transparent--</i></p> <p><i>(I) to fulfill public interest requirements; and</i></p> <p><i>(II) to support the objectives of owners and participants.</i></p> <p><i>(ii) FITNESS STANDARDS- Each derivatives clearing organization shall establish and enforce appropriate fitness standards for--</i></p> <p><i>(I) directors;</i></p> <p><i>(II) members of any disciplinary committee;</i></p> <p><i>(III) members of the derivatives clearing organization;</i></p> <p><i>(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and</i></p> <p><i>(V) any party affiliated with any individual or entity described in this clause.</i></p>	
<p>(P) CONFLICTS OF INTEREST- The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving the conflicts of interest.</p>	<p><i>(P) CONFLICTS OF INTEREST- Each derivatives clearing organization shall--</i></p> <p><i>(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and</i></p> <p><i>(ii) establish a process for resolving conflicts of interest described in clause (i).</i></p>	
<p>(Q) COMPOSITION OF THE BOARDS- The derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.</p>	<p><i>(Q) COMPOSITION OF GOVERNING BOARDS- Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.</i></p>	
<p>(R) LEGAL RISK- The derivatives clearing organization shall have a well founded, transparent, and enforceable legal framework for each aspect of its activities.'</p>	<p><i>(R) LEGAL RISK- Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.</i></p>	

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	<p><i>“(S) MODIFICATION OF CORE PRINCIPLES- The Commission may conform the core principles established in this paragraph to reflect evolving United States and international standards.’</i></p> <p><i>(d) Conflicts of Interest- The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or material equity investment.</i></p>	
<p>(4) Section 5b of such Act (7 U.S.C. 7a-1) is further amended by adding after subsection (i), as added by this section, the following:</p> <p>“(j) Reporting-</p> <p>“(1) IN GENERAL- A derivatives clearing organization that clears swaps shall provide to the Commission all information determined by the Commission to be necessary to perform the responsibilities of the Commission under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. The Commission shall share the information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.</p> <p>“(2) PUBLIC INFORMATION- A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).</p> <p>“(3) A derivatives clearing organization shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.’</p> <p>(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the</p>	<p><i>(e) Reporting Requirements- Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (as amended by subsection (b)) is amended by adding at the end the following:</i></p> <p><i>“(k) Reporting Requirements-</i></p> <p><i>“(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS- Each derivatives clearing organization that clears swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.</i></p> <p><i>“(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS- The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for--</i></p> <p><i>“(A) swaps data reported to swap data repositories; and</i></p> <p><i>“(B) swaps traded on swap execution facilities.</i></p> <p><i>“(3) REPORTS ON SECURITY-BASED SWAP AGREEMENTS TO BE SHARED WITH THE SECURITIES AND EXCHANGE COMMISSION-</i></p> <p><i>“(A) IN GENERAL- A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(79) of the Securities Exchange Act) shall, upon request, make available to the Securities and Exchange Commission all books and records relating to such security-based swap agreements, consistent with the confidentiality and disclosure requirements of section 8.</i></p> <p><i>“(B) JURISDICTION- Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a derivatives clearing organization that is</i></p>	

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<p>last sentence by inserting `central bank and ministries' after `department' each place it appears.</p>	<p><i>registered with the Commission.'</i></p> <p><i>`(4) INFORMATION SHARING- Subject to section 8, and upon request, the Commission shall share information collected under paragraph (2) with--</i></p> <ul style="list-style-type: none"> <li><i>`(A) the Board;</i></li> <li><i>`(B) the Securities and Exchange Commission;</i></li> <li><i>`(C) each appropriate prudential regulator;</i></li> <li><i>`(D) the Financial Stability Oversight Council;</i></li> <li><i>`(E) the Department of Justice; and</i></li> <li><i>`(F) any other person that the Commission determines to be appropriate, including--</i></li> <li style="padding-left: 20px;"><i>`(i) foreign financial supervisors (including foreign futures authorities);</i></li> <li style="padding-left: 20px;"><i>`(ii) foreign central banks; and</i></li> <li style="padding-left: 20px;"><i>`(iii) foreign ministries.</i></li> </ul> <p><i>`(5) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT- Before the Commission may share information with any entity described in paragraph (4)--</i></p> <ul style="list-style-type: none"> <li><i>`(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and</i></li> <li><i>`(B) each entity shall agree to indemnify the Commission for any expenses arising from litigation relating to the information provided under section 8.</i></li> </ul> <p><i>`(6) PUBLIC INFORMATION- Each derivatives clearing organization that clears swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).'</i></p> <p><i>(f) Public Disclosure- Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence--</i></p> <ul style="list-style-type: none"> <li><i>(1) by inserting ` , central bank and ministries,' after `department' each place it appears; and</i></li> <li><i>(2) by striking ` . is a party.' and inserting ` , is a party.'</i></li> </ul>	
<p>(c) Legal Certainty for Identified Banking Products-</p> <p>(1) REPEAL- Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.</p> <p>(2) LEGAL CERTAINTY- Section 403 of the Legal Certainty</p>	<p>(g) Legal Certainty for Identified Banking Products-</p> <p>(1) REPEALS- The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended--</p> <ul style="list-style-type: none"> <li>(A) by striking sections 404 and 407 (7 U.S.C. 27b, 27e);</li> </ul>	

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<p>for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:</p>	<p>(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and  (C) in section 408 (7 U.S.C. 27f)--  (i) in subsection (c)--  (I) by striking 'in the case' and all that follows through 'a hybrid' and inserting 'in the case of a hybrid';  (II) by striking '; or' and inserting a period; and  (III) by striking paragraph (2);  (ii) by striking subsection (b); and  (iii) by redesignating subsection (c) as subsection (b).</p>	
<p>(2) LEGAL CERTAINTY- Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:</p>	<p>(2) <i>LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000- Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:</i></p>	
<p><b>SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.</b></p> <p>(a) Exclusion- Except as provided in subsection (b) or (c)--  (1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and  (2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.</p>	<p><i>SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.</i></p> <p><i>(a) Exclusion- Except as provided in subsection (b) or (c)--  (1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and  (2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(79) of the Securities Exchange Act of 1934 do not include any identified bank product.</i></p>	
<p>(b) Exception- An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product--  (1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and  (2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking</p>	<p><i>(b) Exception- An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product--  (1) would meet the definition of a 'swap' under section 1a(46) of the Commodity Exchange Act (7 U.S.C. 1a) or a 'security-based swap' under that section 3(a)(68) of the Securities Exchange Act of 1934; and  (2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking</i></p>	

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<p>product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).</p>	<p><i>product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).</i></p>	
<p>^(c) Exception- The exclusions in subsection (a) shall not apply to an identified banking product that--</p> <p>^(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;</p> <p>^(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and</p> <p>^(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).'</p>	<p><i>^(c) Exception- The exclusions in subsection (a) shall not apply to an identified bank product that--</i></p> <p><i>^(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;</i></p> <p><i>^(2) meets the definition of swap in section 1a(46) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities Exchange Act of 1934; and</i></p> <p><i>^(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).'</i></p>	
<p><b>SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.</b></p> <p>Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:</p> <p>^(j) Public Reporting of Aggregate Swap Data-</p> <p>^(1) IN GENERAL- The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).</p> <p>^(2) DESIGNEE OF THE COMMISSION- The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).</p> <p>^(3) SOURCES OF INFORMATION- The sources of the information to be publicly reported as described in paragraph (1) are--</p> <p>^(A) derivatives clearing organizations pursuant to section 5b(j)(2);</p> <p>^(B) swap repositories pursuant to section 21(c)(3); and</p> <p>^(C) reports received by the Commission pursuant to section 4r.'</p>	<p><b>SEC. 727. PUBLIC REPORTING OF SWAP TRANSACTION DATA.</b></p> <p><i>Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) is amended by adding at the end the following:</i></p> <p><i>^(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA-</i></p> <p><i>^(A) DEFINITION OF REAL-TIME PUBLIC REPORTING- In this paragraph, the term 'real-time public reporting' means to report data relating to a swap transaction as soon as technologically practicable after the time at which the swap transaction has been executed.</i></p> <p><i>^(B) PURPOSE- The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.</i></p> <p><i>^(C) GENERAL RULE- The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:</i></p> <p><i>^(i) With respect to those swaps that are subject to the mandatory clearing requirement described in subsection (h)(2) (including those</i></p>	

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	<p><i>swaps that are exempted from the requirement pursuant to subsection (h)(10)), the Commission shall require real-time public reporting for such transactions.</i></p> <p><i>“(ii) With respect to those swaps that are not subject to the mandatory clearing requirement described in subsection (h)(2), but are cleared at a registered derivatives clearing organization, the Commission shall require real-time public reporting for such transactions.</i></p> <p><i>“(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such swap trading volumes and positions.</i></p> <p><i>“(iv) With respect to swaps that are exempt from the requirements of subsection (h)(1), pursuant to subsection (h)(10), the Commission shall require real-time public reporting for such transactions.</i></p> <p><b>“(D) REGISTERED ENTITIES AND PUBLIC REPORTING-</b> <i>The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.</i></p> <p><b>“(E) RULEMAKING REQUIRED-</b> <i>With respect to the rule providing for the public availability of transaction and pricing data for swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions--</i></p> <p><i>“(i) to ensure such information does not identify the participants;</i></p> <p><i>“(ii) to specify the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts;</i></p> <p><i>“(iii) to specify the appropriate time delay for</i></p>	

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	<p><i>reporting large notional swap transactions (block trades) to the public; and</i></p> <p><i>(iv) that take into account whether the public disclosure will materially reduce market liquidity.</i></p> <p><i>(F) TIMELINESS OF REPORTING- Parties to a swap (including agents of the parties to a swap) shall be responsible for reporting swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.</i></p> <p><i>(14) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SWAP DATA-</i></p> <p><i>(A) IN GENERAL- In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to--</i></p> <p><i>(i) the trading and clearing in the major swap categories; and</i></p> <p><i>(ii) the market participants and developments in new products.</i></p> <p><i>(B) USE; CONSULTATION- In preparing a report under subparagraph (A), the Commission shall--</i></p> <p><i>(i) use information from swap data repositories and derivatives clearing organizations; and</i></p> <p><i>(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.'</i></p>	
<p><b>SEC. 3105. SWAP REPOSITORIES.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:</p> <p><b>SEC. 21. SWAP REPOSITORIES.</b></p> <p>(a) Registration Requirement-</p> <p>(1) IN GENERAL- It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.</p>	<p><b>SEC. 728. SWAP DATA REPOSITORIES.</b></p> <p>The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:</p> <p><b>SEC. 21. SWAP DATA REPOSITORIES.</b></p> <p>(a) Registration Requirement-</p> <p>(1) IN GENERAL- It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.</p>	

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<p>^(2) INSPECTION AND EXAMINATION- Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.</p>	<p>^(2) <i>INSPECTION AND EXAMINATION- Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.</i></p> <p>^(3) <i>COMPLIANCE WITH CORE PRINCIPLES-</i></p> <p>^(A) <i>IN GENERAL- To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with--</i></p> <p>^(i) <i>the core principles described in this subsection; and</i></p> <p>^(ii) <i>any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</i></p> <p>^(B) <i>REASONABLE DISCRETION OF SWAP DATA REPOSITORY- Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this subsection.</i></p>	
<p>^(b) Standard Setting-</p> <p>^(1) <i>DATA IDENTIFICATION- The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.</i></p> <p>^(2) <i>DATA COLLECTION AND MAINTENANCE- The Commission shall prescribe data collection and data maintenance standards for swap repositories.</i></p> <p>^(3) <i>COMPARABILITY- The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.</i></p>	<p>^(b) <i>Standard Setting-</i></p> <p>^(1) <i>DATA IDENTIFICATION- The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.</i></p> <p>^(2) <i>DATA COLLECTION AND MAINTENANCE- The Commission shall prescribe data collection and data maintenance standards for swap data repositories.</i></p> <p>^(3) <i>COMPARABILITY- The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.</i></p> <p>^(4) <i>SHARING OF INFORMATION WITH SECURITIES AND EXCHANGE COMMISSION- Registered swap data repositories shall make available to the Securities and Exchange Commission, upon request, all books and records relating to security-based swap agreements that are maintained by such swap data repository, consistent with the confidentiality and disclosure requirements of section 8. Nothing in this paragraph shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for a swap data repository that is registered with the Commission.</i></p>	

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<p>^(c) Duties- A swap repository shall--</p> <p>^(1) accept data prescribed by the Commission for each swap under subsection (b);</p> <p>^(2) maintain the data in such form and manner and for such period as may be required by the Commission;</p> <p>^(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and</p> <p>^(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.</p>	<p>^(c) Duties- A swap data repository shall--</p> <p>^(1) accept data prescribed by the Commission for each swap under subsection (b);</p> <p>^(2) confirm with both counterparties to the swap the accuracy of the data that was submitted;</p> <p>^(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;</p> <p>^(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and</p> <p>^(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13);</p> <p>^(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities;</p> <p>^(6) maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity; and</p> <p>^(7) on a confidential basis pursuant to section 8, upon request, and after notifying the Commission of the request, make available all data obtained by the swap data repository, including individual counterparty trade and position data, to--</p> <p>^(A) each appropriate prudential regulator;</p> <p>^(B) the Financial Stability Oversight Council;</p> <p>^(C) the Securities and Exchange Commission;</p> <p>^(D) the Department of Justice; and</p> <p>^(E) any other person that the Commission determines to be appropriate, including--</p> <p>^(i) foreign financial supervisors (including foreign futures authorities);</p> <p>^(ii) foreign central banks;</p> <p>^(iii) foreign ministries; and</p> <p>^(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.</p>	
	<p>^(d) Confidentiality and Indemnification Agreement- Before the swap</p>	

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	<p><i>data repository may share information with any entity described above--</i></p> <p><i>“(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and</i></p> <p><i>“(2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 8.</i></p>	
	<p><i>“(e) Designation of Chief Compliance Officer-</i></p> <p><i>“(1) IN GENERAL- Each swap data repository shall designate an individual to serve as a chief compliance officer.</i></p> <p><i>“(2) DUTIES- The chief compliance officer shall--</i></p> <p><i>“(A) report directly to the board or to the senior officer of the swap data repository;</i></p> <p><i>“(B) review the compliance of the swap data repository with respect to the core principles described in subsection (f);</i></p> <p><i>“(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;</i></p> <p><i>“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</i></p> <p><i>“(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;</i></p> <p><i>“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any--</i></p> <p><i>“(i) compliance office review;</i></p> <p><i>“(ii) look-back;</i></p> <p><i>“(iii) internal or external audit finding;</i></p> <p><i>“(iv) self-reported error; or</i></p> <p><i>“(v) validated complaint; and</i></p> <p><i>“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i></p> <p><i>“(3) ANNUAL REPORTS-</i></p> <p><i>“(A) IN GENERAL- In accordance with rules</i></p>	

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	<p><i>prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</i></p> <ul style="list-style-type: none"> <li><i>ˆ(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and</i></li> <li><i>ˆ(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).</i></li> </ul> <p><i>ˆ(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--</i></p> <ul style="list-style-type: none"> <li><i>ˆ(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and</i></li> <li><i>ˆ(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.</i></li> </ul>	
	<p><i>ˆ(f) Core Principles Applicable To Swap Data Repositories-</i></p> <ul style="list-style-type: none"> <li><i>ˆ(1) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this Act, a swap data repository shall not</i> <ul style="list-style-type: none"> <li><i>ˆ(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or</i></li> <li><i>ˆ(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.</i></li> </ul> </li> <li><i>ˆ(2) GOVERNANCE ARRANGEMENTS- Each swap data repository shall establish governance arrangements that are transparent--</i> <ul style="list-style-type: none"> <li><i>ˆ(A) to fulfill public interest requirements; and</i></li> <li><i>ˆ(B) to support the objectives of the Federal Government, owners, and participants.</i></li> </ul> </li> <li><i>ˆ(3) CONFLICTS OF INTEREST- Each swap data repository shall--</i> <ul style="list-style-type: none"> <li><i>ˆ(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository; and</i></li> <li><i>ˆ(B) establish a process for resolving conflicts of interest described in subparagraph (A).</i></li> </ul> </li> </ul>	

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	<p><i>“(g) Required Registration for Swap Data Repositories- Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.</i></p>	
<p><i>“(d) Rules- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.</i></p>	<p><i>“(h) Rules- The Commission shall adopt rules governing persons that are registered under this section.’.</i></p>	
<p><i>“(e) Exemptions- The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that the swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.’.</i></p>		
<p><b>SEC. 3106. REPORTING AND RECORDKEEPING.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:</p> <p><b>“SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.</b></p> <p><i>“(a) In General- Any person who enters into a swap and--</i>  <i>“(1) did not have the swap cleared in accordance with section 2(j)(1); and</i>  <i>“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,</i>  <i>shall meet the requirements in subsection (b).</i></p> <p><i>“(b) Reports- Any person described in subsection (a) shall--</i>  <i>“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and</i>  <i>“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an</i></p>	<p><b>SEC. 729. REPORTING AND RECORDKEEPING.</b></p> <p><i>The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o-1) the following:</i></p> <p><b>“SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.</b></p> <p><i>“(a) Required Reporting of Swaps Not Accepted by Any Derivatives Clearing Organization-</i>  <i>“(1) IN GENERAL- Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to--</i>  <i>“(A) a swap data repository described in section 21; or</i>  <i>“(B) in the case in which there is no swap data repository that would accept the swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.</i></p> <p><i>“(2) TRANSITION RULE FOR PREENACTMENT SWAPS-</i>  <i>“(A) SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF</i></p>	

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<p>appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.</p> <p>“(c) Identical Data- In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.’.</p>	<p>2010- Each swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than--</p> <p style="padding-left: 40px;">“(i) 30 days after issuance of the interim final rule; or</p> <p style="padding-left: 40px;">“(ii) such other period as the Commission determines to be appropriate.</p> <p>“(B) COMMISSION RULEMAKING- The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each swap entered into before the date of enactment as referenced in subparagraph (A).</p> <p>“(C) EFFECTIVE DATE- The reporting provisions described in this section shall be effective upon the enactment of this section.</p> <p>“(3) REPORTING OBLIGATIONS-</p> <p style="padding-left: 20px;">“(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT- With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).</p> <p style="padding-left: 20px;">“(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT- With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).</p> <p style="padding-left: 20px;">“(C) OTHER SWAPS- With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).</p> <p>“(b) Duties of Certain Individuals- Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not--</p> <p style="padding-left: 40px;">“(1) clear the swap in accordance with section 2(h)(1); or</p> <p style="padding-left: 40px;">“(2) have the data regarding the swap accepted by a swap data repository in accordance with rules (including timeframes) adopted by the Commission under section 21.</p>	

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	<p><i>“(c) Requirements- An individual or entity described in subsection (b) shall--</i></p> <p><i>“(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and</i></p> <p><i>“(2) maintain books and records pertaining to the swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by--</i></p> <p><i>“(A) any representative of the Commission;</i></p> <p><i>“(B) an appropriate prudential regulator;</i></p> <p><i>“(C) the Securities and Exchange Commission;</i></p> <p><i>“(D) the Financial Stability Oversight Council; and</i></p> <p><i>“(E) the Department of Justice.</i></p> <p><i>“(d) Identical Data- In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 21.’.</i></p>	
<p><b>SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:</p> <p><b>“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.</b></p> <p><b>“(a) Registration-</b></p> <p><b>“(1) It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.</b></p> <p><b>“(2) It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.</b></p>	<p><b>SEC. 731. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 729) the following:</p> <p><b>“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.</b></p> <p><b>“(a) Registration-</b></p> <p><b>“(1) SWAP DEALERS- It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.</b></p> <p><b>“(2) MAJOR SWAP PARTICIPANTS- It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.</b></p>	
<p><b>“(b) Requirements-</b></p> <p><b>“(1) IN GENERAL- A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.</b></p>	<p><b>“(b) Requirements-</b></p> <p><b>“(1) IN GENERAL- A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.</b></p>	

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<p>“(2) CONTENTS- The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. The person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to the person’s business as the Commission may require.</p>	<p>“(2) CONTENTS-  “(A) <i>IN GENERAL-</i> The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.  “(B) <i>CONTINUAL REPORTING-</i> A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.</p>	
<p>“(3) EXPIRATION- Each registration shall expire at such time as the Commission may by rule or regulation prescribe.</p>	<p>“(3) <i>EXPIRATION-</i> Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.</p>	
<p>“(4) RULES- Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for swap dealers and major swap participants.</p>	<p>“(4) <i>RULES-</i> Except as provided in subsections (c), (e), and (f), the Commission may prescribe rules applicable to non-bank swap dealers and non-bank major swap participants, including rules that limit the activities of swap dealers and major swap participants.</p>	
<p>“(5) TRANSITION- Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.</p>	<p>“(5) <i>TRANSITION-</i> Rules under this section shall provide for the registration of swap dealers and major swap participants not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.</p>	
<p>“(6) STATUTORY DISQUALIFICATION- Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.</p>	<p>“(6) <i>STATUTORY DISQUALIFICATION-</i> Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.</p>	
	<p>“(c) <i>Dual Registration-</i></p>	

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	<p><i>“(1) SWAP DEALER- Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a security-based swap dealer.</i></p> <p><i>“(2) MAJOR SWAP PARTICIPANT- Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether the person also is a depository institution or is registered with the Securities and Exchange Commission as a major security-based swap participant.</i></p>	
<p><i>“(c) Rules-</i></p> <p><i>“(1) IN GENERAL- Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.</i></p> <p><i>“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS- The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.</i></p>	<p><i>“(d) Rulemakings-</i></p> <p><i>“(1) IN GENERAL- The Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.</i></p> <p><i>“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS-</i></p> <p><i>“(A) IN GENERAL- The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.</i></p> <p><i>“(B) APPLICABILITY- Subparagraph (A) does not limit the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.</i></p>	
<p><i>“(d) Capital and Margin Requirements-</i></p> <p><i>“(1) IN GENERAL-</i></p> <p><i>“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS- Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that:</i></p> <p><i>“(i) help ensure the safety and soundness of the swap dealer or major swap participant; and</i></p> <p><i>“(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.</i></p> <p><i>“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS- Each registered swap dealer and major swap participant for which there is not a</i></p>	<p><i>“(e) Capital and Margin Requirements-</i></p> <p><i>“(1) IN GENERAL-</i></p> <p><i>“(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- Each registered swap dealer and major swap participant that is a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the appropriate Federal banking agency shall by rule or regulation prescribe under paragraph (2)(A) to help ensure the safety and soundness of the swap dealer or major swap participant.</i></p> <p><i>“(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- Each registered swap dealer and</i></p>	

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<p>Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that--</p> <ul style="list-style-type: none"> <li>^(i) help ensure the safety and soundness of the swap dealer or major swap participant; and</li> <li>^(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.</li> </ul>	<p><i>major swap participant that is not a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Securities and Exchange Commission shall by rule or regulation prescribe under paragraph (2)(B) to help ensure the safety and soundness of the swap dealer or major swap participant.</i></p>	
<p>^(2) RULES-</p> <p>^(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant for which there is a Prudential Regulator.</p> <p>^(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.</p> <p>^(3) AUTHORITY- Nothing in this section shall limit the authority of the Commission to set capital requirements for a registered futures commission merchant or introducing broker in accordance with section 4f.</p>	<p>^(2) RULES-</p> <p>^(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>The appropriate Federal banking agencies, in consultation with the Commission and the Securities and Exchange Commission, shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants that are depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</i></p> <p>^(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- <i>The Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants that are not depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</i></p> <p>^(3) CAPITAL-</p> <p>^(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>The capital requirements prescribed under paragraph (2)(A) for swap dealers and major swap participants that are depository institutions shall contain--</i></p> <ul style="list-style-type: none"> <li><i>^(i) a capital requirement that is greater than zero for swaps that are cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j); and</i></li> </ul>	

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	<p>(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not cleared, substantially higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j) than for swaps that are cleared.</p> <p>(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- The capital requirements prescribed under paragraph (2)(B) for swap dealers and major swap participants that are not depository institutions shall be as strict as or stricter than the capital requirements prescribed for swap dealers and major swap participants that are depository institutions under paragraph (2)(A).</p> <p>(C) RULE OF CONSTRUCTION-</p> <p>(i) IN GENERAL- Nothing in this section shall limit, or be construed to limit, the authority--</p> <p>(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) (except for section 4f(a)(3)) in accordance with section 4f(b); or</p> <p>(II) of the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (except for section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) in accordance with section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)).</p> <p>(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS- A futures</p>	

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	<p><i>commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under this Act or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).</i></p> <p><i>“(4) MARGIN-</i>  <i>“(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- The appropriate Federal banking agency for swap dealers and major swap participants that are depository institutions shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j).</i>  <i>“(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- The Commission and the Securities and Exchange Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) for swap dealers and major swap participants that are not depository institutions on all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that is exempt from registration under section 5b(j). Any such initial and variation margin requirements shall be as strict as or stricter than the margin requirements prescribed under paragraph (4)(A).</i></p> <p><i>“(5) MARGIN REQUIREMENTS- In prescribing margin requirements under this subsection, the appropriate Federal banking agency with respect to swap dealers and major swap participants that are depository institutions and the Commission with respect to swap dealers and major swap participants that are not depository institutions may permit the use of noncash collateral, as the agency or the Commission determines to be consistent with--</i>  <i>“(A) preserving the financial integrity of markets trading swaps; and</i></p>	

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	<p><i>“(B) preserving the stability of the United States financial system.</i></p> <p><b>“(6) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS-</b></p> <p><i>“(A) IN GENERAL- The appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.</i></p> <p><i>“(B) COMPARABILITY- The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for--</i></p> <p style="padding-left: 40px;"><i>“(i) swap dealers; and</i></p> <p style="padding-left: 40px;"><i>“(ii) major swap participants.</i></p> <p><b>“(7) REQUESTED MARGIN-</b> <i>If any party to a swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii), or from the margin requirements of paragraph (4)(B)(i) pursuant to the provisions of paragraph (4)(B)(ii), requests that such swap be margined, then--</i></p> <p style="padding-left: 40px;"><i>“(A) the exemption shall not apply; and</i></p> <p style="padding-left: 40px;"><i>“(B) the counterparty to such swap shall provide the requested margin.</i></p> <p><b>“(8) APPLICABILITY WITH RESPECT TO COUNTERPARTIES-</b> <i>Paragraph (4) shall not apply to initial and variation margin for swaps in which 1 of the counterparties is not--</i></p> <p style="padding-left: 40px;"><i>“(A) a swap dealer;</i></p> <p style="padding-left: 40px;"><i>“(B) a major swap participant; or</i></p> <p style="padding-left: 40px;"><i>“(C) a financial entity as described in section 2(h)(9)(A)(ii), and such counterparty is eligible for and utilizing the commercial end user clearing exemption under section 2(h)(9).</i></p>	
<p><b>“(e) Reporting and Recordkeeping-</b></p> <p><b>“(1) IN GENERAL-</b> Each registered swap dealer and major swap participant--</p> <p style="padding-left: 40px;"><b>“(A)</b> shall make such reports as are prescribed by the Commission by rule or regulation regarding the</p>	<p><b>“(f) Reporting and Recordkeeping-</b></p> <p><b>“(1) IN GENERAL-</b> Each registered swap dealer and major swap participant--</p> <p style="padding-left: 40px;"><b>“(A)</b> shall make such reports as are required by the Commission by rule or regulation regarding the</p>	

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<p>transactions and positions and financial condition of the person;</p> <p>“(B) for which--</p> <p>    “(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;</p> <p>    “(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;</p> <p>“(C) shall keep the books and records open to inspection and examination by any representative of the Commission; and</p> <p>“(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.</p> <p>“(2) RULES- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.</p>	<p><i>transactions and positions and financial condition of the registered swap dealer or major swap participant;</i></p> <p><i>“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and</i></p> <p><i>“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and</i></p> <p><i>“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.</i></p> <p><i>“(2) RULES- The Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.</i></p>	
<p>“(f) Daily Trading Records-</p> <p>“(1) IN GENERAL- Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.</p>	<p>“(g) Daily Trading Records-</p> <p>“(1) IN GENERAL- Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.</p>	
<p>“(2) INFORMATION REQUIREMENTS- The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.</p>	<p>“(2) INFORMATION REQUIREMENTS- The daily trading records shall include such information as the Commission shall require by rule or regulation.</p>	
<p>“(3) CUSTOMER RECORDS- Each registered swap dealer and major swap participant shall maintain daily trading records for</p>	<p>“(3) COUNTERPARTY RECORDS- Each registered swap dealer and major swap participant shall maintain daily trading</p>	

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each customer or counterparty in such manner and form as to be identifiable with each swap transaction.	<i>records for each counterparty in a manner and form that is identifiable with each swap transaction.</i>	
` (4) AUDIT TRAIL- Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.	<i>` (4) AUDIT TRAIL- Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.</i>	
` (5) RULES- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.	<i>` (5) RULES- The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.</i>	
<p>` (g) Business Conduct Standards-</p> <p>` (1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing--</p> <p>    ` (A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);</p> <p>    ` (B) diligent supervision of its business as a swap dealer;</p> <p>    ` (C) adherence to all applicable position limits; and</p> <p>    ` (D) such other matters as the Commission shall determine to be necessary or appropriate.</p>	<p><i>` (h) Business Conduct Standards-</i></p> <p><i>` (1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with such business conduct standards as may be prescribed by the Commission by rule or regulation that relate to--</i></p> <p><i>    ` (A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);</i></p> <p><i>    ` (B) diligent supervision of the business of the registered swap dealer and major swap participant;</i></p> <p><i>    ` (C) adherence to all applicable position limits; and</i></p> <p><i>    ` (D) such other matters as the Commission determines to be appropriate.</i></p> <p><i>` (2) SPECIAL RULE; FIDUCIARY DUTIES TO CERTAIN ENTITIES-</i></p> <p><i>    ` (A) GOVERNMENTAL ENTITIES- A swap dealer that provides advice regarding, or offers to enter into, or enters into a swap with a State, State agency, city, county, municipality, or other political subdivision of a State or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision of a State, or the Federal agency, as appropriate.</i></p> <p><i>    ` (B) PENSION PLANS; ENDOWMENTS; RETIREMENT PLANS- A swap dealer that provides advice regarding, or offers to enter into, or enters into a swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate.</i></p>	
` (2) BUSINESS CONDUCT REQUIREMENTS- Business	<i>` (3) BUSINESS CONDUCT REQUIREMENTS- Business</i>	

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<p>conduct requirements adopted by the Commission shall--</p> <p>`(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;</p> <p>`(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of--</p> <p>-</p> <p>    `(i) information about the material risks and characteristics of the swap;</p> <p>    `(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and</p> <p>    `(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and</p> <p>`(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.</p>	<p><i>conduct requirements adopted by the Commission shall--</i></p> <p><i>`(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;</i></p> <p><i>`(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of--</i></p> <p><i>    `(i) information about the material risks and characteristics of the swap;</i></p> <p><i>    `(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap;</i></p> <p><i>    `(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and</i></p> <p><i>    `(iv)(I) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization; and</i></p> <p><i>    `(II) for uncleared swaps, the daily mark of the swap dealer or the major swap participant;</i></p> <p><i>`(C) establish a standard of conduct for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;</i></p> <p><i>`(D) establish a standard of conduct for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, to have a reasonable basis to believe that the counterparty has an independent representative that--</i></p> <p><i>    `(i) has sufficient knowledge to evaluate the transaction and risks;</i></p> <p><i>    `(ii) is not subject to a statutory disqualification;</i></p>	

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	<p>(iii) is independent of the swap dealer or major swap participant;</p> <p>(iv) undertakes a duty to act in the best interests of the counterparty it represents;</p> <p>(v) makes appropriate disclosures; and</p> <p>(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and</p> <p>(E) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.</p>	
<p>(3) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.</p>	<p>(4) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.</p>	
<p>(h) Documentation Standards-</p> <p>(1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.</p>	<p>(i) Documentation and Back Office Standards-</p> <p>(1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.</p>	
<p>(2) RULES- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the standards described in paragraph (1) for swap dealers and major swap participants.</p>	<p>(2) RULES- The Commission shall adopt rules governing documentation and back office standards for swap dealers and major swap participants.</p>	
<p>(i) Dealer Responsibilities- Each registered swap dealer and major swap participant at all times shall comply with the following requirements:</p> <p>(1) MONITORING OF TRADING- The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.</p>	<p>(j) Duties- Each registered swap dealer and major swap participant at all times shall comply with the following requirements:</p> <p>(1) MONITORING OF TRADING- The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.</p>	
	<p>(2) RISK MANAGEMENT PROCEDURES- The swap dealer or major swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the swap dealer or major swap participant.</p>	

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<p>“(2) DISCLOSURE OF GENERAL INFORMATION- The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning--</p> <ul style="list-style-type: none"> <li>“(A) terms and conditions of its swaps;</li> <li>“(B) swap trading operations, mechanisms, and practices;</li> <li>“(C) financial integrity protections relating to swaps; and</li> <li>“(D) other information relevant to its trading in swaps.</li> </ul>	<p>“(3) DISCLOSURE OF GENERAL INFORMATION- The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning--</p> <ul style="list-style-type: none"> <li>“(A) terms and conditions of its swaps;</li> <li>“(B) swap trading operations, mechanisms, and practices;</li> <li>“(C) financial integrity protections relating to swaps; and</li> <li>“(D) other information relevant to its trading in swaps.</li> </ul>	
<p>“(3) ABILITY TO OBTAIN INFORMATION- The swap dealer or major swap participant shall--</p> <ul style="list-style-type: none"> <li>“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and</li> <li>“(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.</li> </ul>	<p>“(4) ABILITY TO OBTAIN INFORMATION- The swap dealer or major swap participant shall--</p> <ul style="list-style-type: none"> <li>“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and</li> <li>“(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.</li> </ul>	
<p>“(4) CONFLICTS OF INTEREST- The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that--</p> <ul style="list-style-type: none"> <li>“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and</li> <li>“(B) address such other issues as the Commission determines appropriate.</li> </ul>	<p>“(5) CONFLICTS OF INTEREST- The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that--</p> <ul style="list-style-type: none"> <li>“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and</li> <li>“(B) address such other issues as the Commission determines to be appropriate.</li> </ul>	
<p>“(5) ANTITRUST CONSIDERATIONS- The swap dealer or</p>	<p>“(6) ANTITRUST CONSIDERATIONS- Unless necessary or</p>	

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<p>major swap participant shall avoid--            `(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or            `(B) imposing any material anticompetitive burden on trading.'.</p>	<p><i>appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall not--</i>  <i>`(A) adopt any process or take any action that results in any unreasonable restraint of trade; or</i>  <i>`(B) impose any material anticompetitive burden on trading or clearing.</i></p>	
	<p><i>`(k) Designation of Chief Compliance Officer-</i>  <i>`(1) IN GENERAL- Each swap dealer and major swap participant shall designate an individual to serve as a chief compliance officer.</i>  <i>`(2) DUTIES- The chief compliance officer shall--</i>  <i>`(A) report directly to the board or to the senior officer of the swap dealer or major swap participant;</i>  <i>`(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;</i>  <i>`(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;</i>  <i>`(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</i>  <i>`(E) ensure compliance with this Act (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;</i>  <i>`(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any--</i>  <i>`(i) compliance office review;</i>  <i>`(ii) look-back;</i>  <i>`(iii) internal or external audit finding;</i>  <i>`(iv) self-reported error; or</i>  <i>`(v) validated complaint; and</i>  <i>`(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i>  <i>`(3) ANNUAL REPORTS-</i>  <i>`(A) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that</i></p>	

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	<p><i>contains a description of--</i></p> <ul style="list-style-type: none"> <li><i>`(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and</i></li> <li><i>`(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).</i></li> </ul> <p><i>`(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--</i></p> <ul style="list-style-type: none"> <li><i>`(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and</i></li> <li><i>`(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.'</i></li> </ul>	
<p><b>SEC. 3108. CONFLICTS OF INTEREST.</b></p> <p>Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by--</p> <ul style="list-style-type: none"> <li>(1) redesignating subsection (c) as subsection (d); and</li> <li>(2) inserting after subsection (b) the following:</li> </ul> <p><i>`(c) Conflicts of Interest- The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that--</i></p> <ul style="list-style-type: none"> <li><i>`(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and</i></li> <li><i>`(2) address such other issues as the Commission determines appropriate.'</i></li> </ul>	<p><b>SEC. 732. CONFLICTS OF INTEREST.</b></p> <p><i>Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended--</i></p> <ul style="list-style-type: none"> <li><i>(1) by redesignating subsection (c) as subsection (e); and</i></li> <li><i>(2) by inserting after subsection (b) the following:</i></li> </ul> <p><i>`(c) Conflicts of Interest- The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that--</i></p> <ul style="list-style-type: none"> <li><i>`(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and</i></li> <li><i>`(2) address such other issues as the Commission determines to be appropriate.</i></li> </ul> <p><i>`(d) Designation of Chief Compliance Officer-</i></p> <ul style="list-style-type: none"> <li><i>`(1) IN GENERAL- Each futures commission merchant shall designate an individual to serve as a chief compliance officer.</i></li> <li><i>`(2) DUTIES- The chief compliance officer shall--</i></li> </ul> <ul style="list-style-type: none"> <li><i>`(A) report directly to the board or to the senior officer of the futures commission merchant;</i></li> <li><i>`(B) review the compliance of the futures commission merchant with respect to requirements described in this</i></li> </ul>	

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	<p>section;</p> <p>`(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;</p> <p>`(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</p> <p>`(E) ensure compliance with this Act (including regulations and each rule prescribed by the Commission under this section) relating, but not limited, to--</p> <ul style="list-style-type: none"> <li>`(i) contracts of sale of a commodity for future delivery;</li> <li>`(ii) options on the contracts described in clause (i);</li> <li>`(iii) commodity options;</li> <li>`(iv) retail commodity transactions;</li> <li>`(v) security futures products;</li> <li>`(vi) leverage contracts; and</li> <li>`(vii) swaps;</li> </ul> <p>`(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any--</p> <ul style="list-style-type: none"> <li>`(i) compliance office review;</li> <li>`(ii) look-back;</li> <li>`(iii) internal or external audit finding;</li> <li>`(iv) self-reported error; or</li> <li>`(v) validated complaint; and</li> </ul> <p>`(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</p> <p>`(3) ANNUAL REPORTS-</p> <p>`(A) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</p> <ul style="list-style-type: none"> <li>`(i) the compliance of the futures commission merchant with respect to this Act (including regulations); and</li> <li>`(ii) each policy and procedure of the futures commission merchant of the chief compliance officer (including the code of ethics and</li> </ul>	

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	<p><i>conflict of interest policies).</i>  <i>“(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--</i>  <i>“(i) accompany each appropriate financial report of the futures commission merchant that is required to be furnished to the Commission pursuant to this section; and</i>  <i>“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.’.</i></p>	
<p><b>SEC. 3109. SWAP EXECUTION FACILITIES.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:</p> <p><b>“SEC. 5h. SWAP EXECUTION FACILITIES.</b></p> <p>“(a) Registration- A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission as a designated contract market under section 5 or a swap execution facility under section 5.</p>	<p><b>SEC. 733. SWAP EXECUTION FACILITIES.</b></p> <p><i>The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b-2) the following:</i></p> <p><b>“SEC. 5h. SWAP EXECUTION FACILITIES.</b></p> <p>“(a) Registration-</p> <p>“(1) <i>IN GENERAL- No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.</i></p> <p>“(2) <i>DUAL REGISTRATION- Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission as a swap execution facility.</i></p>	
<p>“(b) Requirements for Trading-</p> <p>“(1) A swap execution facility that is registered under subsection (a) may make available for trading any swap.</p> <p>“(2) <b>RULES FOR TRADING THROUGH THE FACILITY-</b> Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a swap to be traded through the facilities of a designated contract market or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a swap, notwithstanding section 2(k), if the swap is executed, reported, recorded, or confirmed in accordance with the rules of the designated contract market or swap execution facility.</p>	<p>“(b) <i>Trading and Trade Processing- A swap execution facility that is registered under subsection (a) may--</i></p> <p>“(1) <i>make available for trading any swap; and</i></p> <p>“(2) <i>facilitate trade processing of any swap.</i></p>	

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<p>“(3) AGRICULTURAL SWAPS- A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.</p>		
<p>“(c) Trading by Contract Markets- A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.</p>	<p>“(c) <i>Identification of Facility Used To Trade Swaps by Contract Markets-</i> A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for listing and executing trades of swaps on or through the contract market and the swap execution facility, identify whether the electronic trading of such swaps is taking place on or through the contract market or the swap execution facility.</p>	
<p>“(d) Core Principles for Swap Execution Facilities- “(1) IN GENERAL- To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.</p>	<p>“(d) <i>Core Principles for Swap Execution Facilities-</i> “(1) <i>COMPLIANCE WITH CORE PRINCIPLES-</i> “(A) <i>IN GENERAL-</i> To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with-- “(i) <i>the core principles described in this subsection; and</i> “(ii) <i>any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</i> “(B) <i>REASONABLE DISCRETION OF SWAP EXECUTION FACILITY-</i> Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.</p>	
<p>“(2) COMPLIANCE WITH RULES- The swap execution facility shall-- “(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and “(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to--</p>	<p>“(2) <i>COMPLIANCE WITH RULES-</i> A swap execution facility shall-- “(A) <i>monitor and enforce compliance with any rule of the swap execution facility, including--</i> “(i) <i>the terms and conditions of the swaps traded or processed on or through the swap execution facility; and</i> “(ii) <i>any limitation on access to the swap execution facility;</i> “(B) <i>establish and enforce trading, trade processing,</i></p>	

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<p>(i) provide market participants with impartial access to the market; and  (ii) capture information that may be used in establishing whether rule violations have occurred.</p>	<p><i>and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means--</i>  <i>(i) to provide market participants with impartial access to the market; and</i>  <i>(ii) to capture information that may be used in establishing whether rule violations have occurred;</i>  <i>(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and</i>  <i>(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h)(2)(F), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement of section 113(d) of the Wall Street Transparency and Accountability Act of 2010.</i></p>	
<p>(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION- The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.</p>	<p><i>(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION- The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.</i></p>	
<p>(4) MONITORING OF TRADING- The swap execution facility shall--  (A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and  (B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.</p>	<p><i>(4) MONITORING OF TRADING AND TRADE PROCESSING- The swap execution facility shall--</i>  <i>(A) establish and enforce rules or terms and conditions defining, or specifications detailing--</i>  <i>(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and</i>  <i>(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and</i>  <i>(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.</i></p>	

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<p>“(5) ABILITY TO OBTAIN INFORMATION- The swap execution facility shall--</p> <p>“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;</p> <p>“(B) provide the information to the Commission upon request; and</p> <p>“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.</p>	<p>“(5) ABILITY TO OBTAIN INFORMATION- The swap execution facility shall--</p> <p>“(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;</p> <p>“(B) provide the information to the Commission on request; and</p> <p>“(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.</p>	
<p>“(6) POSITION LIMITS OR ACCOUNTABILITY-</p> <p>“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of its contracts made available for trading on the trading facility, where necessary and appropriate, position limitations or position accountability for speculators who establish positions in the contract.</p> <p>“(B) For any contract of a swap execution facility that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility--</p> <p>“(i) may set a position limitation at a level that is lower than the Commission limitation; and</p> <p>“(ii) shall monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.</p>	<p>“(6) POSITION LIMITS OR ACCOUNTABILITY-</p> <p>“(A) IN GENERAL- To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.</p> <p>“(B) POSITION LIMITS- For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall set its position limitation at a level no higher than the Commission limitation.</p> <p>“(C) POSITION ENFORCEMENT- For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), a swap execution facility shall reject any proposed swap transaction if, based on information readily available to a swap execution facility, any proposed swap transaction would cause a swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.</p>	
<p>“(7) FINANCIAL INTEGRITY OF TRANSACTIONS- The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).</p>	<p>“(7) FINANCIAL INTEGRITY OF TRANSACTIONS- The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).</p>	
<p>“(8) EMERGENCY AUTHORITY- The swap execution facility</p>	<p>“(8) EMERGENCY AUTHORITY- The swap execution facility</p>	

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<p>shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.</p>	<p><i>shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.</i></p>	
<p>“(9) <b>TIMELY PUBLICATION OF TRADING INFORMATION</b>- The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.</p>	<p>“(9) <b>TIMELY PUBLICATION OF TRADING INFORMATION</b>-  “(A) <b>IN GENERAL</b>- <i>The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.</i>  “(B) <b>CAPACITY OF SWAP EXECUTION FACILITY</b>- <i>The swap execution facility shall be required to have the capacity to electronically capture trade information with respect to transactions executed on the facility.</i></p>	
<p>“(10) <b>RECORDKEEPING AND REPORTING</b>- The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.</p>	<p>“(10) <b>RECORDKEEPING AND REPORTING</b>-  “(A) <b>IN GENERAL</b>- <i>A swap execution facility shall--</i>  “(i) <i>maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and</i>  “(ii) <i>report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act.</i>  “(B) <b>REQUIREMENTS</b>- <i>The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap data repositories.</i></p>	
<p>“(11) <b>ANTITRUST CONSIDERATIONS</b>- The swap execution facility shall avoid--  “(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or  “(B) imposing any material anticompetitive burden on trading on the swap execution facility.</p>	<p>“(11) <b>ANTITRUST CONSIDERATIONS</b>- <i>Unless necessary or appropriate to achieve the purposes of this Act, the swap execution facility shall not--</i>  “(A) <i>adopt any rules or taking any actions that result in any unreasonable restraint of trade; or</i>  “(B) <i>impose any material anticompetitive burden on trading or clearing.</i></p>	

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<p>^(12) CONFLICTS OF INTEREST- The swap execution facility shall--</p> <p>^(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and</p> <p>^(B) establish a process for resolving the conflicts of interest.</p>	<p>^(12) CONFLICTS OF INTEREST- The swap execution facility shall--</p> <p>^(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and</p> <p>^(B) establish a process for resolving the conflicts of interest.</p>	
<p>^(13) FINANCIAL RESOURCES-</p> <p>^(A) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.</p> <p>^(B) The financial resources of the swap execution facility shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of 1 year, calculated on a rolling basis.</p>	<p>^(13) FINANCIAL RESOURCES-</p> <p>^(A) IN GENERAL- The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.</p> <p>^(B) DETERMINATION OF RESOURCE ADEQUACY- The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.</p>	
<p>^(14) SYSTEM SAFEGUARDS- The swap execution facility shall--</p> <p>^(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;</p> <p>^(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and</p> <p>^(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.</p>	<p>^(14) SYSTEM SAFEGUARDS- The swap execution facility shall--</p> <p>^(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that--</p> <p>^(i) are reliable and secure; and</p> <p>^(ii) have adequate scalable capacity;</p> <p>^(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for--</p> <p>^(i) the timely recovery and resumption of operations; and</p> <p>^(ii) the fulfillment of the responsibilities and obligation of the swap execution facility; and</p> <p>^(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued--</p> <p>^(i) order processing and trade matching;</p> <p>^(ii) price reporting;</p>	

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	<p>(iii) market surveillance and  (iv) maintenance of a comprehensive and accurate audit trail.</p>	
<p>(15) DESIGNATION OF COMPLIANCE OFFICER-  (A) IN GENERAL- Each swap execution facility shall designate an individual to serve as a compliance officer.</p>	<p>(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER-  (A) IN GENERAL- Each swap execution facility shall designate an individual to serve as a chief compliance officer.</p>	
<p>(B) DUTIES- The compliance officer--  (i) shall report directly to the board or to the senior officer of the facility;  (ii) shall--  (I) review compliance with the core principles in this subsection;  (II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;  (III) be responsible for administering the policies and procedures required to be established pursuant to this section; and  (IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and  (iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-testing, and closing of non-compliant issues.</p>	<p>(B) DUTIES- The chief compliance officer shall--  (i) report directly to the board or to the senior officer of the facility;  (ii) review compliance with the core principles in this subsection;  (iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;  (iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;  (v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and  (vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.  (C) REQUIREMENTS FOR PROCEDURES- In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.</p>	
<p>(C) ANNUAL REPORTS REQUIRED- The compliance officer shall annually prepare and sign a report on the compliance of the facility with this Act</p>	<p>(D) ANNUAL REPORTS-  (i) IN GENERAL- In accordance with rules prescribed by the Commission, the chief</p>	

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<p>and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.</p>	<p><i>compliance officer shall annually prepare and sign a report that contains a description of--</i></p> <p><i>“(I) the compliance of the swap execution facility with this Act; and</i></p> <p><i>“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the swap execution facility.</i></p> <p><i>“(ii) REQUIREMENTS- The chief compliance officer shall--</i></p> <p><i>“(I) submit each report described in clause (i) with the appropriate financial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and</i></p> <p><i>“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.</i></p>	
<p>“(e) Exemptions- The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.</p>	<p><i>“(e) Exemptions- The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.</i></p>	
<p>“(f) Rules- No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.’.</p>	<p><i>“(f) Rules- The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.’.</i></p>	
<p><b>SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.</b></p> <p>(a) Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1 et seq.) are repealed.</p> <p>(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.</p>	<p><b>SEC. 734. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.</b></p> <p><i>(a) In General- Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.</i></p> <p><i>(b) Conforming Amendments-</i></p> <p><i>(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended--</i></p> <p><i>(A) in subsection (a)(1)(A), in the first sentence, by</i></p>	

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<p>(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.</p>	<p><i>striking `or 5a'; and (B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking `section 5a of this Act' and all that follows through `5d of this Act' and inserting `section 5b of this Act'. (2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended-- (A) by striking `that--' and all that follows through `(i) has been designated' and inserting `that has been designated'; (B) by striking `; or' and inserting `; and' and (C) by striking clause (ii).</i></p>	
<p><b>SEC. 3111. DESIGNATED CONTRACT MARKETS.</b></p> <p>(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraphs (1) and (2) and inserting the following:  `1) IN GENERAL- To be designated as, and to maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.</p>	<p><b>SEC. 735. DESIGNATED CONTRACT MARKETS.</b></p> <p><i>(a) Criteria for Designation- Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b). (b) Core Principles for Contract Markets- Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following: (d) Core Principles for Contract Markets-  `1) DESIGNATION AS CONTRACT MARKET-  `A) IN GENERAL- To be designated, and maintain a designation, as a contract market, a board of trade shall comply with--  `i) any core principle described in this subsection; and  `ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).  `B) REASONABLE DISCRETION OF CONTRACT MARKET- Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.</i></p>	
<p>`2) COMPLIANCE WITH RULES-  `A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract</p>	<p>`2) COMPLIANCE WITH RULES-  `A) IN GENERAL- The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including--  `i) access requirements;</p>	

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<p>market and the contract market's abusive trade practice prohibitions.</p> <p>“(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.</p> <p>“(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.’.</p>	<p>“(ii) the terms and conditions of any contracts to be traded on the contract market; and</p> <p>“(iii) rules prohibiting abusive trade practices on the contract market.</p> <p>“(B) <i>CAPACITY OF CONTRACT MARKET</i>- The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.</p> <p>“(C) <i>REQUIREMENT OF RULES</i>- The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.’.</p>	
<p>(b) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraphs (4) and (5) and inserting the following:</p> <p>“(4) <i>PREVENTION OF MARKET DISRUPTION</i>- The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.</p>	<p>“(4) <i>PREVENTION OF MARKET DISRUPTION</i>- The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including--</p> <p>“(A) methods for conducting real-time monitoring of trading; and</p> <p>“(B) comprehensive and accurate trade reconstructions.</p>	
<p>“(5) <i>POSITION LIMITATIONS OR ACCOUNTABILITY</i>-</p> <p>“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.</p> <p>“(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.’.</p>	<p>“(5) <i>POSITION LIMITATIONS OR ACCOUNTABILITY</i>-</p> <p>“(A) <i>IN GENERAL</i>- To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.</p> <p>“(B) <i>MAXIMUM ALLOWABLE POSITION LIMITATION</i>- For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.</p>	
<p>(c) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking</p>	<p>“(7) <i>AVAILABILITY OF GENERAL INFORMATION</i>- The board</p>	

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<p>paragraph (7) and inserting the following:            `(7) AVAILABILITY OF GENERAL INFORMATION- The board of trade shall make available to market authorities, market participants, and the public accurate information concerning--            `(A) the terms and conditions of the contracts of the contract market; and            `(B) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade's electronic matching platform or other trade execution facility.'</p>	<p><i>of trade shall make available to market authorities, market participants, and the public accurate information concerning--</i>  <i>`(A) the terms and conditions of the contracts of the contract market; and</i>  <i>`(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and</i>  <i>`(ii) the rules and specifications describing the operation of the contract market's--</i>  <i>`(I) electronic matching platform; or</i>  <i>`(II) trade execution facility.</i></p>	
<p>(d) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:            `(9) EXECUTION OF TRANSACTIONS-            `(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.            `(B) The rules may authorize, for bona fide business purposes--            `(i) transfer trades or office trades;            `(ii) an exchange of--                `(I) futures in connection with a cash commodity transaction;                `(II) futures for cash commodities; or                `(III) futures for swaps; or            `(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.'</p>	<p><i>`(9) EXECUTION OF TRANSACTIONS-</i>  <i>`(A) IN GENERAL- The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.</i>  <i>`(B) RULES- The rules of the board of trade may authorize, for bona fide business purposes--</i>  <i>`(i) transfer trades or office trades;</i>  <i>`(ii) an exchange of--</i>                <i>`(I) futures in connection with a cash commodity transaction;</i>                <i>`(II) futures for cash commodities; or</i>                <i>`(III) futures for swaps; or</i>  <i>`(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.</i></p>	
<p>(e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17)) is amended by adding at the end the following: `The board of trade shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.'</p>	<p><i>`(18) RECORDKEEPING- The board of trade shall maintain records of all activities relating to the business of the contract market--</i>  <i>`(A) in a form and manner that is acceptable to the Commission; and</i>  <i>`(B) for a period of at least 5 years.</i></p>	

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<p>(f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by adding at the end the following:</p> <p>“(19) FINANCIAL RESOURCES- The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.</p>	<p>“(21) FINANCIAL RESOURCES-</p> <p>“(A) IN GENERAL- <i>The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.</i></p> <p>“(B) DETERMINATION OF ADEQUACY- <i>The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.</i>’.</p>	
<p>“(20) SYSTEM SAFEGUARDS- The board of trade shall--</p> <p>“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;</p> <p>“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade's responsibilities and obligations; and</p> <p>“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.</p>	<p>“(20) SYSTEM SAFEGUARDS- <i>The board of trade shall--</i></p> <p>“(A) <i>establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;</i></p> <p>“(B) <i>establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and</i></p> <p>“(C) <i>periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.</i></p>	
<p>“(21) DIVERSITY OF BOARDS OF DIRECTORS- The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.</p>	<p>“(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS- <i>The governance arrangements of the board of trade shall be designed to promote the objectives of market participants.</i></p>	
<p>“(22) DISCIPLINARY PROCEDURES- The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or</p>	<p>“(13) DISCIPLINARY PROCEDURES- <i>The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or</i></p>	

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market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.'.	<i>market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.</i>	
(g) Section 5 of such Act (7 U.S.C. 7) is amended by striking subsection (b).		
	<p>“(3) <i>CONTRACTS NOT READILY SUBJECT TO MANIPULATION-</i> The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.</p>	
	<p>“(6) <i>EMERGENCY AUTHORITY-</i> The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority--</p> <p>“(A) to liquidate or transfer open positions in any contract;</p> <p>“(B) to suspend or curtail trading in any contract; and</p> <p>“(C) to require market participants in any contract to meet special margin requirements.</p>	
	<p>“(8) <i>DAILY PUBLICATION OF TRADING INFORMATION-</i> The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.</p>	
	<p>“(10) <i>TRADE INFORMATION-</i> The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information--</p> <p>“(A) to assist in the prevention of customer and market abuses; and</p> <p>“(B) to provide evidence of any violations of the rules of the contract market.</p>	
	<p>“(11) <i>FINANCIAL INTEGRITY OF TRANSACTIONS-</i> The board of trade shall establish and enforce--</p> <p>“(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a</p>	

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	<p>derivatives clearing organization); and            `(B) rules to ensure--                `(i) the financial integrity of any--                    `(I) futures commission merchant;                    and                    `(II) introducing broker; and                `(ii) the protection of customer funds.</p>	
	<p>`(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS- The board of trade shall establish and enforce rules--                `(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and                `(B) to promote fair and equitable trading on the contract market.</p>	
	<p>`(14) DISPUTE RESOLUTION- The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.</p>	
	<p>`(15) GOVERNANCE FITNESS STANDARDS- The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).</p>	
	<p>`(16) CONFLICTS OF INTEREST- The board of trade shall establish and enforce rules--                `(A) to minimize conflicts of interest in the decision-making process of the contract market; and                `(B) to establish a process for resolving conflicts of interest described in subparagraph (A).</p>	
	<p>`(19) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall not--                `(A) adopt any rule or taking any action that results in any unreasonable restraint of trade; or                `(B) impose any material anticompetitive burden on</p>	

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	<i>trading on the contract market.</i>	
<p><b>SEC. 3112. MARGIN.</b></p> <p>(a) Section 8a(7)(C) of the Commodity Exchange Act (7 U.S.C. 12a(7)(C)) is amended by striking ` , excepting the setting of levels of margin'.</p> <p>(b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is amended by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:</p> <p style="padding-left: 40px;">`(D) margin requirements, provided that such rules, regulations, or orders shall--</p> <p style="padding-left: 80px;">`(i) be limited to protecting the financial integrity of the derivatives clearing organization;</p> <p style="padding-left: 80px;">`(ii) be designed for risk management purposes in order to protect the financial integrity of transactions; and</p> <p style="padding-left: 80px;">`(iii) not set specific margin amounts.'.</p>	<p><b>SEC. 736. MARGIN.</b></p> <p><i>Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended--</i></p> <p style="padding-left: 40px;"><i>(1) in subparagraph (C), by striking ` , excepting the setting of levels of margin';</i></p> <p style="padding-left: 40px;"><i>(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and</i></p> <p style="padding-left: 40px;"><i>(3) by inserting after subparagraph (C) the following:</i></p> <p style="padding-left: 80px;"><i>`(D) margin requirements, provided that the rules, regulations, or orders shall--</i></p> <p style="padding-left: 120px;"><i>`(i) be limited to protecting the financial integrity of the derivatives clearing organization;</i></p> <p style="padding-left: 120px;"><i>`(ii) be designed for risk management purposes to protect the financial integrity of transactions; and</i></p> <p style="padding-left: 120px;"><i>`(iii) not set specific margin amounts;'.</i></p>	
<p><b>SEC. 3113. POSITION LIMITS.</b></p> <p>(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by--</p> <p style="padding-left: 40px;">(1) inserting `(1)' after `(a)';</p> <p style="padding-left: 40px;">(2) striking `on electronic trading facilities with respect to a significant price discovery contract' in the first sentence and inserting `swaps that perform or affect a significant price discovery function with respect to registered entities';</p> <p style="padding-left: 40px;">(3) inserting ` , including any group or class of traders,' in the second sentence after `held by any person';</p> <p style="padding-left: 40px;">(4) striking `on an electronic trading facility with respect to a significant price discovery contract,' in the second sentence and inserting `swaps that perform or affect a significant price discovery function with respect to registered entities,'; and</p>	<p><b>SEC. 737. POSITION LIMITS.</b></p> <p><i>(a) Aggregate Position Limits- Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended--</i></p> <p style="padding-left: 40px;"><i>(1) by inserting after `(a)' the following:</i></p> <p style="padding-left: 80px;"><i>`(1) IN GENERAL- ';</i></p> <p style="padding-left: 40px;"><i>(2) in the first sentence, by striking `on electronic trading facilities with respect to a significant price discovery contract' and inserting `swaps that perform or affect a significant price discovery function with respect to registered entities';</i></p> <p style="padding-left: 40px;"><i>(3) in the second sentence--</i></p> <p style="padding-left: 80px;"><i>(A) by inserting ` , including any group or class of traders,' after `held by any person'; and</i></p> <p style="padding-left: 80px;"><i>(B) by striking `on an electronic trading facility with respect to a significant price discovery contract,' and inserting `swaps traded on or subject to the rules of an swaps execution facility, or swaps not traded on or subject to the rules of an swaps execution facility that perform a significant price discovery function with respect to a registered entity,'; and</i></p>	

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<p>(5) inserting at the end the following:</p> <p>`(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.</p> <p>`(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.</p> <p>`(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.</p> <p>`(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.</p> <p>`(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits--</p> <p style="padding-left: 2em;">`(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and</p> <p style="padding-left: 2em;">`(B) to the maximum extent practicable, in its discretion--</p> <p style="padding-left: 4em;">`(i) to diminish, eliminate, or prevent excessive speculation as described under this section;</p> <p style="padding-left: 4em;">`(ii) to deter and prevent market manipulation, squeezes, and corners;</p> <p style="padding-left: 4em;">`(iii) to ensure sufficient market liquidity for bona fide hedgers; and</p> <p style="padding-left: 4em;">`(iv) to ensure that the price discovery function of the underlying market is not disrupted.</p> <p>`(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually</p>		

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<p>thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).</p> <p>“(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from--</p> <ul style="list-style-type: none"> <li>“(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;</li> <li>“(ii) 7 predominantly commercial long hedgers of the actual physical commodity for future delivery;</li> <li>“(iii) 4 non-commercial participants in markets for commodities for future delivery; and</li> <li>“(iv) each designated contract market upon which a contract in the commodity for future delivery is traded.</li> </ul> <p>“(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.</p>		
<p>“(5) SIGNIFICANT PRICE DISCOVERY FUNCTION- In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:</p> <p>“(A) PRICE LINKAGE- The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;</p>	<p>“(3) SIGNIFICANT PRICE DISCOVERY FUNCTION- In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider, as appropriate, the following factors:</p> <p>“(A) PRICE LINKAGE- The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a registered entity based on the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.</p>	
<p>“(B) ARBITRAGE- The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis;</p>	<p>“(B) ARBITRAGE- The extent to which the price for the swap is sufficiently related to the price of another contract traded on a registered entity based on the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.</p>	

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<p>^(C) MATERIAL PRICE REFERENCE- The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;</p>	<p>^(C) MATERIAL PRICE REFERENCE- The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a registered entity are directly based on, or are determined by referencing, the price generated by the swap.</p>	
<p>^(D) MATERIAL LIQUIDITY- The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and</p>	<p>^(D) MATERIAL LIQUIDITY- The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a registered entity.</p>	
<p>^(E) OTHER MATERIAL FACTORS- Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.</p>	<p>^(E) OTHER MATERIAL FACTORS- Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.</p>	
<p>^(6) ECONOMICALLY EQUIVALENT CONTRACTS-</p> <p>^(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).</p> <p>^(B) In establishing limits pursuant to subparagraph (A), the Commission shall--</p> <p>^(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and</p> <p>^(ii) establish the limits simultaneously with limits established under paragraph (2).</p>		
<p>^(7) AGGREGATE POSITION LIMITS- The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across--</p>	<p>(4) by adding at the end the following:</p> <p>^(2) AGGREGATE POSITION LIMITS- The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based on the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across--</p>	

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<p>           `(A) contracts listed by designated contract markets;            `(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and            `(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.         </p>	<p> <i>               `(A) contracts listed by designated contract markets;                `(B) with respect to an agreement, contract, or transaction that settles against, or in relation to, any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade;                `(C) swaps traded on or subject to the rules of a swap execution facility; and                `(D) swaps not traded on or subject to the rules of a swap execution facility that perform or affect a significant price discovery function with respect to a registered entity.             </i> </p>	
<p>           `(8) EXEMPTIONS- The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.'.         </p>	<p> <i>               `(4) EXEMPTIONS- The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class of transactions from any requirement that the Commission establishes under this section with respect to position limits.'.             </i> </p>	
<p>           (b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is amended--            (1) in paragraph (1), by striking `or derivatives transaction execution facility or facilities or electronic trading facility' and inserting `or swap execution facility or facilities'; and            (2) in paragraph (2), by striking `or derivatives transaction execution facility or facilities or electronic trading facility' and inserting `or swap execution facility'.         </p>	<p> <i>               (b) Conforming Amendments- Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended--                (1) in paragraph (1), by striking `or derivatives transaction execution facility or facilities or electronic trading facility' and inserting `or swap execution facility or facilities'; and                (2) in paragraph (2), by striking `or derivatives transaction execution facility or facilities or electronic trading facility' and inserting `or swap execution facility'.             </i> </p>	
<p>           (c) Section 4a(c) of such Act is amended--            (1) by inserting `(1)' after `(c)'; and            (2) by adding after and below the end the following:            `(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that--            `(A)(i) represents a substitute for transactions made or         </p>		

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<p>to be made or positions taken or to be taken at a later time in a physical marketing channel;  (ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and  (iii) arises from the potential change in the value of--  (I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;  (II) liabilities that a person owns or anticipates incurring; or  (III) services that a person provides, purchases, or anticipates providing or purchasing; or  (B) reduces risks attendant to a position resulting from a swap that--  (i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or  (ii) meets the requirements of subparagraph (A).'</p>		
<p>(d) This section shall become effective on the date of its enactment.</p>		
<p><b>SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.</b></p> <p>(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended--  (1) in paragraph (1), by striking '5a(d) and 5b(c)(2)' and inserting '5b(c)(2) and 5h(e)'; and  (2) in paragraph (2), by striking 'shall not' and inserting 'may'.  (b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting 'or swap execution facility' after 'contract market' each place it appears.  (c) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1)) is amended--  (1) by inserting '(A)' after 'In general- '; and  (2) by adding at the end the following:  (B) The new rule or rule amendment shall become effective, pursuant to the registered entity's certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission's</p>	<p><b>SEC. 745. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.</b></p> <p>(a) <i>Core Principles for Contract Markets- Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) (as amended by section 735(b)) is amended by striking paragraph (1) and inserting the following:</i>  (1) <b>DESIGNATION-</b>  (A) <b>IN GENERAL-</b> <i>To be designated as, and to maintain the designation of, a board of trade as a contract market, the board of trade shall comply with--</i>  (i) <i>the core principles described in this subsection; and</i>  (ii) <i>any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</i>  (B) <b>DISCRETION OF BOARD OF TRADE-</b> <i>Unless the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable</i></p>	

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<p>receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).</p> <p>“(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.</p> <p>“(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.’</p> <p>(d) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is repealed.</p>	<p><i>discretion in establishing the manner by which the board of trade complies with each core principle.’</i></p> <p><i>(b) Core Principles- Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) (as amended by section 725(c)) is amended by striking subparagraph (A) and inserting the following:</i></p> <p>“(A) REGISTRATION-</p> <p>“(i) IN GENERAL- <i>To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with--</i></p> <p>“(I) <i>the core principles described in this paragraph; and</i></p> <p>“(II) <i>any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).</i></p> <p>“(ii) DISCRETION OF COMMISSION- <i>Unless the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle.’</i></p> <p><i>(c) Effect of Interpretation- Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended by striking paragraph (2) and inserting the following:</i></p> <p>“(2) EFFECT OF INTERPRETATION- <i>An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).’</i></p> <p><i>(d) New Contracts, New Rules, and Rule Amendments-</i></p> <p><i>(1) IN GENERAL- A registered entity may elect to list for trading or accept for clearing any new contract, or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).</i></p> <p><i>(2) RULE REVIEW- The new rule or rule amendment described in paragraph (1) shall become effective, pursuant to the certification of the registered entity, on the date that is 10</i></p>	

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	<p><i>business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).</i></p> <p><b>(3) STAY OF CERTIFICATION FOR RULES-</b></p> <p><i>(A) A notification by the Commission pursuant to paragraph (2) shall stay the certification of the new rule or rule amendment for up to an additional 90 days from the date of the notification.</i></p> <p><i>(B) A rule or rule amendment subject to a stay pursuant to subparagraph (A) shall become effective, pursuant to the certification of the registered entity, at the expiration of the period described in subparagraph (A) unless the Commission--</i></p> <p><i>(i) withdraws the stay prior to that time; or</i></p> <p><i>(ii) notifies the registered entity during such period that it objects to the proposed certification on the grounds that it is inconsistent with this Act (including regulations under this Act).</i></p> <p><b>(4) PRIOR APPROVAL-</b></p> <p><i>(A) IN GENERAL- A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.</i></p> <p><i>(B) PRIOR APPROVAL REQUIRED- Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.</i></p> <p><i>(C) DEADLINE- If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after</i></p>	

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	<p><i>submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.</i></p> <p>(5) APPROVAL-</p> <p>(A) RULES- <i>The Commission shall approve a new rule, or rule amendment, of a registered entity unless the Commission finds that the new rule, or rule amendment, is inconsistent with this subtitle (including regulations).</i></p> <p>(B) CONTRACTS AND INSTRUMENTS- <i>The Commission shall approve a new contract or other instrument unless the Commission finds that the new contract or other instrument would violate this subtitle (including regulations).</i></p> <p>(C) SPECIAL RULE FOR REVIEW AND APPROVAL OF EVENT CONTRACTS AND SWAPS CONTRACTS-</p> <p>(i) EVENT CONTRACTS- <i>In connection with the listing of agreements, contracts, transactions, or swaps in excluded commodities that are based upon the occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or levels of a commodity described in section 1a(2)(i)), by a designated contract market or swap execution facility, the Commission may determine that such agreements, contracts, or transactions are contrary to the public interest if the agreements, contracts, or transactions involve--</i></p> <ul style="list-style-type: none"> <li><i>(I) activity that is unlawful under any Federal or State law;</i></li> <li><i>(II) terrorism;</i></li> <li><i>(III) assassination;</i></li> <li><i>(IV) war;</i></li> <li><i>(V) gaming; or</i></li> <li><i>(VI) other similar activity determined by the Commission, by rule or regulation, to be contrary to the public interest.</i></li> </ul> <p>(ii) PROHIBITION- <i>No agreement, contract, or transaction determined by the Commission to be contrary to the public interest under</i></p>	

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	<p><i>clause (i) may be listed or made available for clearing or trading on or through a registered entity.</i></p> <p><i>(iii) SWAPS CONTRACTS-</i></p> <p><i>(I) IN GENERAL- In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.</i></p> <p><i>(II) REQUIREMENTS- Any such criteria, conditions, or rules shall consider--</i></p> <p><i>(aa) the financial integrity of the derivatives clearing organization; and</i></p> <p><i>(bb) any other factors which the Commission determines may be appropriate.</i></p> <p><i>(iv) DEADLINE- The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limitation.</i></p> <p><i>(e) Violation of Core Principles- Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended by striking subsection (d).</i></p>	
<p><b>SEC. 3115. FOREIGN BOARDS OF TRADE.</b></p> <p>(a) In General- Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:</p> <p>(e) Foreign Boards of Trade-</p> <p>(1) IN GENERAL- The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of</p>	<p><b>SEC. 738. FOREIGN BOARDS OF TRADE.</b></p> <p>(a) In General- Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended--</p> <p>(1) in the first sentence, by striking 'The Commission' and inserting the following:</p> <p>(2) PERSONS LOCATED IN THE UNITED STATES-</p> <p>(A) IN GENERAL- The Commission';</p> <p>(2) in the second sentence, by striking 'Such rules and</p>	

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<p>the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that--</p> <p>(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and</p> <p>(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)--</p> <p>(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;</p> <p>(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;</p> <p>(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding--</p> <p>(I) the information that the foreign</p>	<p>regulations' and inserting the following:</p> <p>(B) DIFFERENT REQUIREMENTS- Rules and regulations described in subparagraph (A)';</p> <p>(3) in the third sentence--</p> <p>(A) by striking 'No rule or regulation' and inserting the following:</p> <p>(C) PROHIBITION- Except as provided in paragraphs (1) and (2), no rule or regulation';</p> <p>(B) by striking 'that (1) requires' and inserting the following: 'that--</p> <p>(i) requires'; and</p> <p>(C) by striking 'market, or (2) governs' and inserting the following: 'market; or</p> <p>(ii) governs'; and</p> <p>(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:</p> <p>(1) FOREIGN BOARDS OF TRADE-</p> <p>(A) IN GENERAL- It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that--</p> <p>(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and</p> <p>(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)--</p> <p>(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related</p>	

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<p>board of trade will make publicly available;</p> <p>`(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;</p> <p>`(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and</p> <p>`(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;</p> <p>`(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and</p> <p>`(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to the reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.</p>	<p><i>hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;</i></p> <p><i>`(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;</i></p> <p><i>`(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding--</i></p> <p><i>`(aa) the information that the foreign board of trade will make publicly available;</i></p> <p><i>`(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;</i></p> <p><i>`(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and</i></p> <p><i>`(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;</i></p> <p><i>`(IV) provides information to the Commission regarding large trader</i></p>	

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	<p><i>positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and</i></p> <p><i>(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.</i></p>	
<p><i>(2) EXISTING FOREIGN BOARDS OF TRADE- Paragraph (1) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.</i></p>	<p><i>(B) EXISTING FOREIGN BOARDS OF TRADE- Subparagraph (A) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.'</i></p>	
<p><i>(3) PERSONS LOCATED IN THE UNITED STATES- '</i></p>	<p><i>(repeated from above:) (a) In General- Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended--</i></p> <p><i>(1) in the first sentence, by striking 'The Commission' and inserting the following:</i></p> <p><i>(2) PERSONS LOCATED IN THE UNITED STATES-</i></p> <p><i>(A) IN GENERAL- The Commission';</i></p> <p><i>(2) in the second sentence, by striking 'Such rules and regulations' and inserting the following:</i></p> <p><i>(B) DIFFERENT REQUIREMENTS- Rules and regulations described in subparagraph (A)';</i></p> <p><i>(3) in the third sentence--</i></p> <p><i>(A) by striking 'No rule or regulation' and inserting the following:</i></p> <p><i>(C) PROHIBITION- Except as provided in paragraphs (1) and (2), no rule or regulation';</i></p> <p><i>(B) by striking 'that (1) requires' and inserting the</i></p>	

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	<p>following: `that--  `i) requires'; and  (C) by striking `market, or (2) governs' and inserting the following: `market; or  `ii) governs'; and</p>	
<p>(b) Liability of Registered Persons Trading on a Foreign Board of Trade-  (1) Section 4(a) of such Act (7 U.S.C. 6(a)) is amended by inserting `or by subsection (f)' after `Unless exempted by the Commission pursuant to subsection (c)'; and  (2) Section 4 of such Act (7 U.S.C. 6) is further amended by adding at the end the following:  `f(1) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person--  `A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is--  `i) legally organized under the laws of a foreign country;  `ii) authorized to act as a board of trade by a foreign futures authority; and  `iii) subject to regulation by the foreign futures authority; and  `B) has not been determined by the Commission to be operating in violation of subsection (a).  `2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).'</p>	<p>(b) Liability of Registered Persons Trading on a Foreign Board of Trade- Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended--  (1) in subsection (a), in the matter preceding paragraph (1), by inserting `or by subsection (e)' after `Unless exempted by the Commission pursuant to subsection (c)'; and  (2) by adding at the end the following:  `e) Liability of Registered Persons Trading on a Foreign Board of Trade- A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).'</p>	
<p>(c) Contract Enforcement for Foreign Futures Contracts- Section 22(a) of such Act (7 U.S.C. 25(a)) is amended by adding at the end the following:  `5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS- A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board</p>	<p>(c) Contract Enforcement for Foreign Futures Contracts- Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 739) is amended by adding at the end the following:  `6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS- A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to</p>	

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<p>of trade to comply with any provision of this Act.'</p>	<p><i>the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.'</i></p>	
<p><b>SEC. 3116. LEGAL CERTAINTY FOR SWAPS.</b></p> <p>Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:</p> <p>“(4) <b>CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES-</b></p> <p>“(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and</p> <p>“(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursuant to 2(j)(1) or regulations of the Commission pursuant thereto.’.</p>	<p><b>SEC. 739. LEGAL CERTAINTY FOR SWAPS.</b></p> <p><i>Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:</i></p> <p>“(4) <b>CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES-</b></p> <p>“(A) <i>IN GENERAL-</i> <i>No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.</i></p> <p>“(B) <b>SWAPS-</b> <i>No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to an agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction--</i></p> <p>“(i) <i>to meet the definition of a swap under section 1a; or</i></p> <p>“(ii) <i>to be cleared in accordance with section 2(h)(1).</i></p> <p>“(5) <b>LEGAL CERTAINTY FOR LONG-TERM SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010-</b></p> <p>“(A) <i>IN GENERAL-</i> <i>Any swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment, shall not be subject to the mandatory clearing requirements under this Act.</i></p> <p>“(B) <b>EFFECT ON SWAPS-</b> <i>Unless specifically reserved in the applicable bilateral trading agreement, neither</i></p>	

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	<p><i>the enactment of the Wall Street Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a bilateral trading agreement (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the bilateral trading agreement.</i></p> <p><i>“(C) POSITION LIMITS- Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date such position limit rule, regulation, or order.”.</i></p>	
<p><b>SEC. 3117. FDICIA AMENDMENTS.</b></p> <p>Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.</p>	<p><b>SEC. 740. MULTILATERAL CLEARING ORGANIZATIONS.</b></p> <p>Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.</p>	
<p><b>SEC. 3118. ENFORCEMENT AUTHORITY.</b></p> <p>(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:</p> <p><b>“SEC. 4b-1. ENFORCEMENT AUTHORITY.</b></p> <p>“(a) CFTC- Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.</p> <p>“(b) Prudential Regulators- The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.</p> <p>“(c) Referral- (1) If the Prudential Regulator for a swap dealer or major</p>	<p><b>SEC. 741. ENFORCEMENT.</b></p> <p>(a) <i>Enforcement Authority- The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:</i></p> <p><b>“SEC. 4b-1. ENFORCEMENT AUTHORITY.</b></p> <p><i>“(a) Commission- Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the amendments made by the Wall Street Transparency and Accountability Act of 2010 with respect to any person.</i></p> <p><i>“(b) Appropriate Federal Banking Agencies- The appropriate Federal banking agency for swap dealers or major swap participants that are depository institutions, as that term is defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act, with respect to depository institutions that are</i></p>	

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<p>swap participant has cause to believe that the swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.</p> <p>`(2) If the Commission has cause to believe that a swap dealer or major swap participant that has a Prudential Regulator may have engaged in conduct that constitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.'</p>	<p><i>swap dealers or major swap participants.</i></p> <p><i>`(c) Referrals-</i></p> <p><i>`(1) PRUDENTIAL REGULATORS- If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this Act (including section 4s or rules adopted by the Commission under that section), the prudential regulator shall promptly notify the Commission in a written report that includes--</i></p> <p><i>`(A) a request that the Commission initiate an enforcement proceeding under this Act; and</i></p> <p><i>`(B) an explanation of the facts and circumstances that led to the preparation of the written report.</i></p> <p><i>`(2) COMMISSION- If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes--</i></p> <p><i>`(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and</i></p> <p><i>`(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.</i></p> <p><i>`(d) Backstop Enforcement Authority-</i></p> <p><i>`(1) INITIATION OF ENFORCEMENT PROCEEDING BY PRUDENTIAL REGULATOR- If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.</i></p> <p><i>`(2) INITIATION OF ENFORCEMENT PROCEEDING BY COMMISSION- If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.'</i></p>	
	<i>(b) Conforming Amendments-</i>	

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	<p>(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended--</p> <p>(A) in subsection (a)(2), by striking `or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting `or swap,';</p> <p>(B) in subsection (b), by striking `or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting `or swap,'; and</p> <p>(C) by adding at the end the following:</p> <p>(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)--</p> <p>(1) to employ any device, scheme, or artifice to defraud;</p> <p>(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or</p> <p>(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. .</p> <p>(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting `or swap' before `if the transaction is used or may be used'.</p> <p>(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting `or of any swap,' before `or has willfully made'.</p> <p>(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting `or of any swap,' before `or otherwise is violating'.</p> <p>(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a-1(a)) is amended in the matter preceding the proviso by inserting `or any swap' after `commodity for future delivery'.</p>	
<p>(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:</p> <p>(3) DISRUPTIVE PRACTICES- It shall be unlawful for any</p>	<p><b>SEC. 747. ANTIDISRUPTIVE PRACTICES AUTHORITY.</b></p>	

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<p>person to engage in any trading or practice on or subject to the rules of a registered entity that--</p> <p>(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);</p> <p>(B) is, is of the character of, or is commonly known to the trade as 'marking the close' (bidding or offering during or near the market's closing period with the intent to influence the settlement price);</p> <p>(C) is, is of the character of, or is commonly known to the trade as 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution); or</p> <p>(D) constitutes uneconomic trading (trading that has no legitimate economic purpose but for the effect on price).</p> <p>(4) The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit any other trading practice that is disruptive of fair and equitable trading.'</p> <p>(2) The amendment made by paragraph (1) shall become effective upon enactment.</p>	<p><i>Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) (as amended by section 746) is amended by adding at the end the following:</i></p> <p><i>(5) DISRUPTIVE PRACTICES- It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that--</i></p> <p><i>(A) violates bids or offers;</i></p> <p><i>(B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or</i></p> <p><i>(C) is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution).</i></p> <p><i>(6) RULEMAKING AUTHORITY- The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit the trading practices described in paragraph (5) and any other trading practice that is disruptive of fair and equitable trading.</i></p> <p><i>(7) USE OF SWAPS TO DEFRAUD- It shall be unlawful for any person to enter into a swap knowing, or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.'</i></p>	
<p><b>SEC. 3119. ENFORCEMENT.</b></p> <p>(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking 'or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting 'or swap,'.</p> <p>(b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is amended by striking 'or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting 'or swap,'.</p> <p>(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by inserting 'or swap' before 'if the transaction is used or may be used'.</p> <p>(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting 'or of any swap,' before 'or to corner'.</p> <p>(e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4)) is amended by inserting 'swap repository,' before 'or futures association'.</p> <p>(f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1)) is amended by inserting 'swap repository,' before 'or registered futures association' and by inserting ', or swaps,' before 'on the basis'.</p> <p>(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C.</p>	<p><b>SEC. 741. ENFORCEMENT. (cont.)</b></p> <p><i>b) Conforming Amendments-</i></p> <p><i>(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended--</i></p> <p><i>(A) in subsection (a)(2), by striking 'or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting 'or swap,';</i></p> <p><i>(B) in subsection (b), by striking 'or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),' and inserting 'or swap,'; and</i></p> <p><i>(C) by adding at the end the following:</i></p> <p><i>(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value</i></p>	

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<p>1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and inserting after paragraph (5) the following:</p> <p>“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, security-based swap repository, or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Derivative Markets Transparency and Accountability Act of 2009.”</p>	<p>thereof)--</p> <p>“(1) to employ any device, scheme, or artifice to defraud;</p> <p>“(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or</p> <p>“(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”</p> <p>(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting “or swap” before “if the transaction is used or may be used”.</p> <p>(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting “or of any swap,” before “or has willfully made”.</p> <p>(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting “or of any swap,” before “or otherwise is violating”.</p> <p>(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a-1(a)) is amended in the matter preceding the proviso by inserting “or any swap” after “commodity for future delivery”.</p> <p>(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended--</p> <p>(A) in subsection (a)--</p> <p>(i) in paragraph (2), by inserting “or of any swap,” before “or to corner”; and</p> <p>(ii) in paragraph (4), by inserting “swap data repository,” before “or futures association” and</p> <p>(B) in subsection (e)(1)--</p> <p>(i) by inserting “swap data repository,” before “or registered futures association”; and</p> <p>(ii) by inserting “, or swaps,” before “on the basis”.</p> <p>(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:</p> <p>“(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.”</p> <p>(8) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end the following:</p> <p>“(11) SWAPS-</p> <p>“(A) IN GENERAL- Subject to subparagraph (B), this section shall apply to any swap dealer, major swap</p>	

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	<p><i>participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap data repository, or swap execution facility, regardless of whether the dealer, participant, organization, repository, or facility is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or prudential regulator for purposes of the amendments made by the Wall Street Transparency and Accountability Act of 2010.</i></p> <p><i>`(B) LIMITATION- The authority described in subparagraph (A) shall be limited by, and exercised in accordance with, section 4b-1 of the Commodity Exchange Act.'</i></p> <p><i>(9) Section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) is amended--</i></p> <p><i>(A) by striking `(dd),' each place it appears;</i></p> <p><i>(B) in clause (iii), by inserting `, and accounts or pooled investment vehicles described in clause (vi),' before `shall be subject to'; and</i></p> <p><i>(C) by adding at the end the following:</i></p> <p><i>    (vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).'</i></p> <p><i>(10) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended--</i></p> <p><i>(A) by striking `(dd),' each place it appears;</i></p> <p><i>(B) in clause (ii)(I), by inserting `, and accounts or pooled investment vehicles described in clause (vii),' before `shall be subject to'; and</i></p> <p><i>(C) by adding at the end the following:</i></p> <p><i>    (vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).'</i></p> <p><i>(11) Section 1a(19)(A)(iv)(II) of the Commodity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as redesignated by section</i></p>	

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	<p><i>721(a)(1) is amended by inserting before the semicolon at the end the following: `provided, however, that for purposes of section 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the term `eligible contract participant' shall not include a commodity pool in which any participant is not otherwise an eligible contract participant'.</i></p>	
<p><b>SEC. 3120. RETAIL COMMODITY TRANSACTIONS.</b></p> <p>(a) Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended--</p> <p>(1) in paragraph (1), by striking `(other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))' and inserting `(other than section 5b or 12(e)(2)(B))'; and</p> <p>(2) in paragraph (2), by inserting after subparagraph (C) the following:</p> <p style="padding-left: 20px;">`(D) RETAIL COMMODITY TRANSACTIONS-</p> <p style="padding-left: 40px;">`(i) This subparagraph shall apply to, and the Commission shall have jurisdiction over, any agreement, contract, or transaction in any commodity that is--</p> <p style="padding-left: 60px;">`(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and</p> <p style="padding-left: 60px;">`(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.</p> <p style="padding-left: 40px;">`(ii) Clause (i) shall not apply to--</p> <p style="padding-left: 60px;">`(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);</p> <p style="padding-left: 60px;">`(II) any security;</p> <p style="padding-left: 60px;">`(III) a contract of sale that--</p>	<p><b>SEC. 742. RETAIL COMMODITY TRANSACTIONS.</b></p> <p>(a) <i>In General-</i> Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended--</p> <p>(1) in paragraph (1), by striking `(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))' and inserting `, 5b, or 12(e)(2)(B))'; and</p> <p>(2) in paragraph (2), by adding at the end the following:</p> <p style="padding-left: 20px;">`(D) RETAIL COMMODITY TRANSACTIONS-</p> <p style="padding-left: 40px;">`(i) <i>APPLICABILITY-</i> Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is--</p> <p style="padding-left: 60px;">`(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and</p> <p style="padding-left: 60px;">`(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.</p> <p style="padding-left: 40px;">`(ii) <i>EXCEPTIONS-</i> This subparagraph shall not apply to--</p> <p style="padding-left: 60px;">`(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);</p> <p style="padding-left: 60px;">`(II) any security;</p>	

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<p>“(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or</p> <p>“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.</p> <p>“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or</p> <p>“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).</p> <p>“(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.</p> <p>“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;</p> <p>“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;</p> <p>“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity</p>	<p>“(III) a contract of sale that--</p> <p>“(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or</p> <p>“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or</p> <p>“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or</p> <p>“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C.27(b)).</p> <p>“(iii) ENFORCEMENT- Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.</p> <p>“(iv) ELIGIBLE COMMERCIAL ENTITY- For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.</p> <p>“(v) ACTUAL DELIVERY- For purposes of clause (ii)(III), the term ‘actual delivery’ does not include delivery to a third party in a financed transaction in which the commodity is held as collateral.’.</p> <p>(b) Gramm-Leach-Bliley Act- Section 206(a) of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note) is amended, in the matter preceding paragraph (1), by striking ‘For purposes of’ and inserting</p>	

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<p>for any agreement, contract, or transaction for a commodity in connection with its line of business.'</p> <p>(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this section.</p>	<p><i>Except as provided in subsection (e), for purposes of.</i></p> <p><i>(c) Conforming Amendments Relating to Retail Foreign Exchange Transactions-</i></p> <p><i>(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended--</i></p> <p><i>(A) in item (aa), by inserting 'United States' before 'financial institution';</i></p> <p><i>(B) by striking items (dd) and (ff);</i></p> <p><i>(C) by redesignating items (ee) and (gg) as items (dd) and (ff), respectively; and</i></p> <p><i>(D) in item (dd) (as so redesignated), by striking the semicolon and inserting '; or'.</i></p> <p><i>(2) Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) (as amended by subsection (a)(2)) is amended by adding at the end the following:</i></p> <p><i>(E) PROHIBITION-</i></p> <p><i>(i) DEFINITION OF FEDERAL REGULATORY AGENCY- In this subparagraph, the term 'Federal regulatory agency' means--</i></p> <p><i>(I) the Commission;</i></p> <p><i>(II) the Securities and Exchange Commission;</i></p> <p><i>(III) an appropriate Federal banking agency;</i></p> <p><i>(IV) the National Credit Union Association; and</i></p> <p><i>(V) the Farm Credit Administration.</i></p> <p><i>(ii) PROHIBITION- A person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.</i></p> <p><i>(iii) REQUIREMENTS OF RULES AND REGULATIONS-</i></p> <p><i>(I) IN GENERAL- The rules and</i></p>	

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	<p style="text-align: right;"><i>regulations described in clause (ii) shall prescribe appropriate requirements with respect to--</i></p> <p> <i>           `(aa) disclosure;            `(bb) recordkeeping;            `(cc) capital and margin;            `(dd) reporting;            `(ee) business conduct;            `(ff) documentation; and            `(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.         </i> </p> <p style="text-align: right;"><i>           `(II) TREATMENT- The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.'.         </i></p>	
<p><b>SEC. 3121. LARGE SWAP TRADER REPORTING.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 3107 of this Act) the following:</p> <p><b>SEC. 4t. LARGE SWAP TRADER REPORTING.</b></p> <p>           `(a) It shall be unlawful for any person to enter into any swap that         </p>	<p><b>SEC. 730. LARGE SWAP TRADER REPORTING.</b></p> <p><i>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 731) the following:</i></p> <p><b>SEC. 4t. LARGE SWAP TRADER REPORTING.</b></p> <p> <i>           `(a) Prohibition-            `(1) IN GENERAL- Except as provided in paragraph (2), it shall         </i> </p>	

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<p>performs or affects a significant price discovery function with respect to registered entities if--</p> <p>    ` (1) the person directly or indirectly enters into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and</p> <p>    ` (2) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,</p> <p>unless the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.</p> <p>    ` (b) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.</p> <p>    ` (c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.</p> <p>    ` (d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include the transactions and positions of any persons directly or indirectly controlled by the person.</p> <p>    ` (e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).'</p>	<p><i>be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if--</i></p> <p>    ` (A) <i>the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and</i></p> <p>    ` (B) <i>the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.</i></p> <p>    ` (2) <i>EXCEPTION- Paragraph (1) shall not apply if--</i></p> <p>        ` (A) <i>the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and</i></p> <p>        ` (B) <i>in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.</i></p> <p>    ` (b) <i>Requirements-</i></p> <p>        ` (1) <i>IN GENERAL- Books and records described in subsection (a)(2)(B) shall--</i></p> <p>            ` (A) <i>show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation;</i></p> <p>            ` (B) <i>be open at all times to inspection and examination by any representative of the Commission; and</i></p> <p>            ` (C) <i>be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in security-based swap agreements (as that term is defined in section 3(a)(79) of the Securities Exchange Act of 1934), and consistent with the confidentiality and disclosure requirements of section 8.</i></p> <p>        ` (2) <i>JURISDICTION- Nothing in paragraph (1) shall affect the exclusive jurisdiction of the Commission to prescribe recordkeeping and reporting requirements for large swap</i></p>	

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	<p>traders under this section.</p> <p>(c) <i>Applicability-</i> For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.</p> <p>(d) <i>Significant Price Discovery Function-</i> In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).'</p>	
<p><b>SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.</b></p> <p>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4t the following:</p> <p><b>SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.</b></p>	<p><b>SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.</b></p> <p>(a) <i>Segregation Requirements for Cleared Swaps-</i> Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 732) is amended by adding at the end the following:</p> <p>(f) <i>Swaps-</i></p> <p>(1) <b>REGISTRATION REQUIREMENT-</b> It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.</p> <p>(2) <b>CLEARED SWAPS-</b></p> <p>(A) <b>SEGREGATION REQUIRED-</b> A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.</p> <p>(B) <b>COMMINGLING PROHIBITED-</b> Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.</p>	

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	<p><i>“(3) EXCEPTIONS-</i></p> <p><i>“(A) USE OF FUNDS-</i></p> <p><i>“(i) IN GENERAL- Notwithstanding paragraph (2), money, securities, and property of a swaps customer of a futures commission merchant described in paragraph (2) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a derivatives clearing organization.</i></p> <p><i>“(ii) WITHDRAWAL- Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.</i></p> <p><i>“(B) COMMISSION ACTION- Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customer of a futures commission merchant described in paragraph (2) may be commingled and deposited as provided in this section with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.</i></p> <p><i>“(4) PERMITTED INVESTMENTS- Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions</i></p>	

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	<p>as the Commission may prescribe.</p> <p>“(5) <b>COMMODITY CONTRACT</b>- A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).</p> <p>“(6) <b>PROHIBITION</b>- It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.’.</p> <p>(b) <b>Bankruptcy Treatment of Cleared Swaps</b>- Section 761 of title 11, United States Code, is amended--</p> <p>(1) in paragraph (4), by striking subparagraph (F) and inserting the following:</p> <p>“(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and</p> <p>“(ii) with respect to a futures commission merchant or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization;’; and</p> <p>(2) in paragraph (9)(A)(i), by striking ‘the commodity futures account’ and inserting ‘a commodity contract account’.</p> <p>(c) <b>Segregation Requirements for Uncleared Swaps</b>- Section 4s of the Commodity Exchange Act (as added by section 731) is amended by adding at the end the following:</p>	
<p>“(a) <b>Segregation</b>- At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an</p>	<p>“(1) <b>Segregation Requirements</b>-</p> <p>“(1) <b>SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SWAP TRANSACTIONS</b>-</p> <p>“(A) <b>NOTIFICATION</b>- A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty</p>	

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<p>independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.</p>	<p><i>has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.</i>  <i>“(B) SEGREGATION AND MAINTENANCE OF FUNDS- At the request of a counterparty to a swap that provides funds or other property to a swap dealer or major swap participant to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall--</i>  <i>    “(i) segregate the funds or other property for the benefit of the counterparty; and</i>  <i>    “(ii) in accordance with such rules and regulations as the Commission may promulgate, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap dealer or major swap participant.</i></p>	
	<p><i>“(2) APPLICABILITY- The requirements described in paragraph (1) shall--</i>  <i>    “(A) apply only to a swap between a counterparty and a swap dealer or major swap participant that is not submitted for clearing to a derivatives clearing organization; and</i>  <i>    “(B)(i) not apply to variation margin payments; or</i>  <i>    “(ii) not preclude any commercial arrangement regarding--</i>  <i>        “(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and</i>  <i>        “(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.</i></p>	
	<p><i>“(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS- The segregated account described in paragraph (1) shall be--</i>  <i>    “(A) carried by an independent third-party custodian; and</i>  <i>    “(B) designated as a segregated account for and on behalf of the counterparty.</i></p>	
<p><i>“(b) Further Audit Reporting- If a swap dealer does not segregate funds</i></p>	<p><i>“(4) REPORTING REQUIREMENT- If the counterparty does</i></p>	

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<p>pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.'</p>	<p><i>not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the swap dealer or major swap participant shall report to the counterparty of the swap dealer or major swap participant on a quarterly basis that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.'</i></p>	
<p><b>SEC. 3123. OTHER AUTHORITY.</b></p> <p>Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.</p>	<p><b>SEC. 743. OTHER AUTHORITY.</b></p> <p><i>Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.</i></p>	
<p><b>SEC. 3124. ANTITRUST.</b></p> <p>Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term `antitrust laws' has the same meaning given the term in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.</p>		
<p><b>SEC. 3125. REVIEW OF PRIOR ACTIONS.</b></p> <p>Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this title.</p>		
<p><b>SEC. 3126. EXPEDITED PROCESS.</b></p> <p>The Commodity Futures Trading Commission may use emergency and expedited procedures (including any administrative or other procedure as</p>		

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<p>appropriate) to carry out this title if, in its discretion, it deems it necessary to do so.</p>		
<p><b>SEC. 3127. EFFECTIVE DATE.</b></p> <p>(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.</p> <p>(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.</p>	<p><b>SEC. 754. EFFECTIVE DATE.</b></p> <p><i>Unless otherwise provided in this title, this subtitle shall take effect on the date that is 180 days after the date of enactment of this Act.</i></p>	
<p align="center"><b>Subtitle B--Regulation of Security-Based Swap Markets</b></p> <p><b>SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.</b></p> <p>(a) Definitions- Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended--</p> <p>(1) in paragraph (5)(A) and (B), by inserting '(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)' after the word 'securities' in each place it appears;</p> <p>(2) in paragraph (10), by inserting 'security-based swap,' after 'security future,';</p> <p>(3) in paragraph (13), by adding at the end the following: 'For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.';</p> <p>(4) in paragraph (14), by adding at the end the following: 'For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.';</p> <p>(5) in paragraph (39)--</p> <p>(A) by striking 'or government securities dealer' and adding 'government securities dealer, security-based</p>	<p><b>SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.</b></p> <p>(a) Definitions- Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended--</p> <p>(1) in subparagraphs (A) and (B) of paragraph (5), by inserting '(not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)' after 'securities' each place that term appears;</p> <p>(2) in paragraph (10), by inserting 'security-based swap,' after 'security future,';</p> <p>(3) in paragraph (13), by adding at the end the following: 'For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.';</p> <p>(4) in paragraph (14), by adding at the end the following: 'For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.';</p> <p>(5) in paragraph (39)--</p> <p>(A) in subparagraph (B)(i)--</p> <p>(i) in subclause (I), by striking 'or government securities dealer' and inserting 'government securities dealer, security-based swap dealer,</p>	

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<p>swap dealer or major security-based swap participant' in its place in subparagraph (B)(i)(I);            (B) by adding `security-based swap dealer, major security-based swap participant,' after `government securities dealer,' in subparagraph (B)(i)(II);            (C) by striking `or government securities dealer' and adding `government securities dealer, security-based swap dealer or major security-based swap participant' in its place in subparagraph (C); and            (D) by adding `security-based swap dealer, major security-based swap participant,' after `government securities dealer,' in subparagraph (D); and</p>	<p><i>or major security-based swap participant';            and            (ii) in subclause (II), by inserting `security-based swap dealer, major security-based swap participant,' after `government securities dealer,';            (B) in subparagraph (C), by striking `or government securities dealer' and inserting `government securities dealer, security-based swap dealer, or major security-based swap participant'; and            (C) in subparagraph (D), by inserting `security-based swap dealer, major security-based swap participant,' after `government securities dealer,'; and</i></p>	
<p>(6) by adding at the end the following:            `(65) ELIGIBLE CONTRACT PARTICIPANT- The term `eligible contract participant' has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).</p>	<p><i>(6) by adding at the end the following:            `(65) ELIGIBLE CONTRACT PARTICIPANT- The term `eligible contract participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</i></p>	
<p>`(66) MAJOR SWAP PARTICIPANT- The term `major swap participant' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).</p>	<p><i>`(66) MAJOR SWAP PARTICIPANT- The term `major swap participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</i></p>	
<p>`(67) MAJOR SECURITY-BASED SWAP PARTICIPANT-            `(A) IN GENERAL- The term `major security-based swap participant' means any person who is not a security-based swap dealer, and--            `(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or            `(ii) whose outstanding security-based swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.</p>	<p><i>`(67) MAJOR SECURITY-BASED SWAP PARTICIPANT-            `(A) IN GENERAL- The term `major security-based swap participant' means any person--            `(i) who is not a security-based swap dealer;            and            `(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding--            `(aa) positions held for hedging or mitigating commercial risk; and            `(bb) positions maintained by any employee benefit plan (or any contract held by such a plan), as that term is defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), for the primary purpose of hedging or</i></p>	<p>See Section 3307 of HR 4173 for additional, differing definition of Major Security-Based Swap Participant.</p>

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	<p style="text-align: center;"><i>mitigating any risk directly associated with the operation of the plan;</i></p> <p><i>“(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or</i></p> <p><i>“(III) that is a financial entity that--</i></p> <p style="padding-left: 40px;"><i>“(aa) is highly leveraged relative to the amount of capital such entity holds; and</i></p> <p style="padding-left: 40px;"><i>“(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.</i></p>	
<p><i>“(B) DEFINITION OF ‘SUBSTANTIAL NET POSITION’- The Commission shall define by rule or regulation the terms ‘substantial net position’, ‘substantial net counterparty exposure’, and ‘significant credit losses’ at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.</i></p>	<p><i>“(B) DEFINITION OF SUBSTANTIAL POSITION- For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.</i></p>	
<p><i>“(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.</i></p>	<p><i>“(C) SCOPE OF DESIGNATION- For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.</i></p>	
	<p><i>“(D) CAPITAL- In setting capital requirements for a person that is designated as a major security-based swap participant for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take</i></p>	

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	<p><i>into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a major security-based swap participant.</i></p>	
<p><b>“(68) SECURITY-BASED SWAP-</b>  <b>“(A) IN GENERAL-</b> Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that--  “(i) is primarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;  “(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or  “(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.</p>	<p><b>“(68) SECURITY-BASED SWAP-</b>  <b>“(A) IN GENERAL-</b> <i>Except as provided in subparagraph (B), the term ‘security-based swap’ means any agreement, contract, or transaction that--</i>  “(i) <i>is a swap, as that term is defined under section 1a of the Commodity Exchange Act; and</i>  “(ii) <i>is based on--</i>  “(I) <i>an index that is a narrow-based security index, including any interest therein or on the value thereof;</i>  “(II) <i>a single security or loan, including any interest therein or on the value thereof; or</i>  “(III) <i>the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.</i></p>	
<p><b>“(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS-</b> The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only</p>	<p><b>“(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS-</b> <i>The term ‘security-based swap’ shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only</i></p>	

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with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).	<i>with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).</i>	
<p>“(C) EXCLUSION- The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because it references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.</p>	<p>“(C) EXCLUSIONS- The term ‘security-based swap’ does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.</p>	
	<p>“(D) MIXED SWAP- The term ‘security-based swap’ includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).</p>	
<p>“(69) SWAP- The term ‘swap’ has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).</p>	<p>“(69) SWAP- The term ‘swap’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</p>	
<p>“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT- The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-based swap dealer or major security-based swap participant’ means any partner, officer,</p>	<p>“(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT-</p> <p>“(A) IN GENERAL- The term ‘person associated with a security-based swap dealer or major security-based swap participant’ or ‘associated person of a security-</p>	

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<p>director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).</p>	<p><i>based swap dealer or major security-based swap participant' means--</i></p> <p><i>`(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);</i></p> <p><i>`(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or</i></p> <p><i>`(iii) any employee of such security-based swap dealer or major security-based swap participant.</i></p> <p><i>`(B) EXCLUSION- Other than for purposes of section 15F(l)(2), the term `person associated with a security-based swap dealer or major security-based swap participant' or `associated person of a security-based swap dealer or major security-based swap participant' does not include any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.</i></p>	
<p><i>`(71) SECURITY-BASED SWAP DEALER-</i></p> <p><i>`(A) IN GENERAL- The term `security-based swap dealer' means any person that--</i></p> <p><i>`(i) holds itself out as a dealer in security-based swaps;</i></p> <p><i>`(ii) makes a market in security-based swaps;</i></p> <p><i>`(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or</i></p> <p><i>`(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.</i></p>	<p><i>`(71) SECURITY-BASED SWAP DEALER-</i></p> <p><i>`(A) IN GENERAL- The term `security-based swap dealer' means any person who--</i></p> <p><i>`(i) holds themselves out as a dealer in security-based swaps;</i></p> <p><i>`(ii) makes a market in security-based swaps;</i></p> <p><i>`(iii) regularly engages in the purchase and sale of security-based swaps in the ordinary course of a business; or</i></p> <p><i>`(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.</i></p>	
<p><i>`(B) DESIGNATION BY TYPE OR CLASS- A person may be designated a security-based swap dealer for a single type or single class or category of security-based swap and considered not a security-based swap dealer for other types, classes, or categories of security-based</i></p>	<p><i>`(B) DESIGNATION BY TYPE OR CLASS- A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or</i></p>	

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swaps.	<i>categories of security-based swaps or activities.</i>	
<p>“(C) DE MINIMUS EXCEPTION- The Commission shall make a determination to exempt from designation as a security-based swap dealer an entity that engages in a de minimus amount of security-based swap dealing in connection with transactions with or on the behalf of its customers.</p>		
	<p>“(C) CAPITAL- In setting capital requirements for a person that is designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of security-based swaps or classes of security-based swaps or categories of security-based swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a security-based swap dealer.</p>	
<p>“(72) APPROPRIATE FEDERAL BANKING AGENCY- The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).</p>	<p>“(72) APPROPRIATE FEDERAL BANKING AGENCY- The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).</p>	
<p>“(73) BOARD- The term ‘Board’ means the Board of Governors of the Federal Reserve System.</p>	<p>“(73) BOARD- The term ‘Board’ means the Board of Governors of the Federal Reserve System.</p>	
<p>“(74) PRUDENTIAL REGULATOR- The term ‘Prudential Regulator’ means--</p> <p>“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is--</p> <p>“(i) a State-chartered bank that is a member of the Federal Reserve System; or</p> <p>“(ii) a State-chartered branch or agency of a foreign bank;</p> <p>“(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is--</p>	<p>“(74) PRUDENTIAL REGULATOR- The term ‘prudential regulator’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</p>	

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<p>(i) a national bank; or  (ii) a federally chartered branch or agency of a foreign bank; and  (C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.</p>		
<p>(75) SWAP DEALER- The term `swap dealer' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).</p>	<p>(76) SWAP DEALER- The term `swap dealer' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).</p>	
<p>(76) SECURITY-BASED SWAP AGREEMENT-  (A) IN GENERAL- For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term `security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.  (B) EXCLUSIONS- The term `security-based swap agreement' does not include any security-based swap.</p>	<p>(78) SECURITY-BASED SWAP AGREEMENT-  (A) IN GENERAL- For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term `security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.  (B) EXCLUSIONS- The term `security-based swap agreement' does not include any security-based swap.'</p>	
<p>(76) SECURITY-BASED SWAP REPOSITORY- The term `security-based swap repository' means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.</p>	<p>(75) SECURITY-BASED SWAP DATA REPOSITORY- The term `security-based swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.</p>	
<p>(77) SWAP EXECUTION FACILITY- The term `swap execution facility' means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a national securities exchange, including any electronic trade execution or voice brokerage facility.'</p>	<p>(77) SWAP EXECUTION FACILITY- The term `swap execution facility' means a facility in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, or confirmation facility, that--  (A) facilitates the execution of security-based swaps between persons; and  (B) is not a designated contract market</p>	
<p>(b) Authority to Further Define Terms- The Securities and Exchange</p>	<p>(b) Authority To Further Define Terms- The Securities and Exchange</p>	

<b>House-passed H.R. 4173</b>	<b>Senate-passed H.R. 4173 (S. 3217 as amended)</b>	<b>Notes</b>
<p>Commission may adopt a rule further defining the terms `security-based swap', `security-based swap dealer', `major security-based swap participant', and `eligible contract participant' with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this title.</p>	<p><i>Commission may, by rule, further define the terms `security-based swap', `security-based swap dealer', `major security-based swap participant', and `eligible contract participant' with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.</i></p>	
	<p><i>(c) Other Incorporated Definitions- Except as the context otherwise requires, in this subtitle, the terms `prudential regulator', `swap', `swap dealer', `major swap participant', `swap data repository', `associated person of a swap dealer or major swap participant', `eligible contract participant', `swap execution facility', `security-based swap', `security-based swap dealer', `major security-based swap participant', `security-based swap data repository', and `associated person of a security-based swap dealer or major security-based swap participant' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by this Act.</i></p>	
<p><b>SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.</b></p> <p>(a) Repeal of Law- Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.</p>	<p><b>SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAP AGREEMENTS.</b></p> <p>(a) Repeal- Sections 206B and 206C of the Gramm-Leach-Bliley Act (Public Law 106-102; 15 U.S.C. 78c note) are repealed.</p>	
<p>(b) Conforming Amendments to the Securities Act of 1933-</p> <p>(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b-1) is amended by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' each place that such term appears.</p>	<p>(b) Conforming Amendments to the Securities Act of 1933-</p> <p>(1) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b-1) is amended--</p> <p>(A) by striking subsection (a) and reserving that subsection; and</p> <p>(B) by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' each place that such term appears and inserting `(as defined in section 3(a)(78) of the Securities Exchange Act of 1934)'.</p>	
<p>(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended--</p> <p>(A) in subsection (a)--</p> <p>(i) by inserting `(including security-based swaps)' after `securities'; and</p> <p>(ii) by striking `206B of the Gramm-Leach-Bliley Act' and inserting `3(a)(76) of the Securities Exchange Act of 1934'; and</p>	<p>(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended--</p> <p>(A) in subsection (a)--</p> <p>(i) by inserting `(including security-based swaps)' after `securities'; and</p> <p>(ii) by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' and inserting `(as defined in section 3(a)(78) of the</p>	

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	<i>Securities Exchange Act)'; and</i>	
(B) in subsection (d), by striking `206B of the Gramm-Leach-Bliley Act' and inserting `3(a)(76) of the Securities Exchange Act of 1934'.	<i>(B) in subsection (d), by striking `206B of the Gramm-Leach-Bliley Act' and inserting `3(a)(78) of the Securities Exchange Act of 1934'.</i>	
(c) Conforming Amendments to the Securities Exchange Act of 1934- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended as follows: (1) Section 3A (15 U.S.C. 78c-1) is amended by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' each place that the term appears. (2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:	<i>(c) Conforming Amendments to the Securities Exchange Act of 1934- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended--  (1) in section 3A (15 U.S.C. 78c-1)--  (A) by striking subsection (a) and reserving that subsection; and  (B) by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' each place that the term appears;  (2) in section 9 (15 U.S.C. 78i)--  (A) in subsection (a), by striking paragraphs (2) through (5) and inserting the following:</i>	
`(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others	<i>`(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.</i>	
`(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.	<i>`(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or a security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.</i>	
`(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding	<i>`(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to make,</i>	

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<p>any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.</p>	<p><i>regarding any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security, such security-based swap, or such security-based swap agreement any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.</i></p>	
<p>“(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.’.</p>	<p><i>“(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, a security-based swap, or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, any security-based swap, or any security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.’; and</i></p>	
<p>(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act)’;  (4) Section 10 (15 U.S.C. 78j) is amended by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act)’ each place that the term appears.</p>	<p><i>(B) in subsection (i), by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act)’;</i>  <i>(3) in section 10 (15 U.S.C. 78j)--</i>  <i>(A) in subsection (b), by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act),’ each place that term appears; and</i>  <i>(B) in the matter following subsection (b), by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act)’;</i></p>	
<p>(5) Section 15(c)(1) is amended--  (A) in subparagraph (A), by striking ‘, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),’; and  (B) in subparagraphs (B) and (C), by striking ‘agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)’ in each place that the term appears.</p>	<p><i>(4) in section 15 (15 U.S.C. 78o)--</i>  <i>(A) in subsection (c)(1)(A), by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act),’;</i>  <i>(B) in subparagraphs (B) and (C) of subsection (c)(1), by striking ‘(as defined in section 206B of the Gramm-Leach-Bliley Act)’ each place that term appears;</i></p>	
<p>(6) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking ‘(as</p>	<p><i>(C) by redesignating subsection (i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455)), as</i></p>	

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defined in section 206B of the Gramm-Leach-Bliley Act)'. (7) Section 16 (15 U.S.C. 78p) is amended-- (A) in subsection (a)(2)(C), by striking `(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))'; (B) in subsection (b), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' in each place that the term appears; and (C) in subsection (g), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';	<i>subsection (j); and</i>  <i>(D) in subsection (j), as redesignated by subparagraph (C), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';</i>	
(8) Section 20 (15 U.S.C. 78t) is amended-- (A) in subsection (d), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)'; and (B) in subsection (f), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)'; and	<i>(5) in section 16 (15 U.S.C. 78p)--</i> <i>(A) in subsection (a)(2)(C), by striking `(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))';</i> <i>(B) in subsection (a)(3)(B), by inserting `or security-based swaps' after `security-based swap agreement';</i> <i>(C) in the first sentence of subsection (b), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';</i> <i>(D) in the third sentence of subsection (b), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)' and inserting `or a security-based swap';</i> <i>and</i> <i>(E) in subsection (g), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';</i>	
(9) Section 21A (15 U.S.C. 78u-1) is amended-- (A) in subsection (a)(1), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)'; and (B) in subsection (g), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';	<i>(6) in section 20 (15 U.S.C. 78t),</i> <i>(A) in subsection (d), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)'; and</i> <i>(B) in subsection (f), by striking `(as defined in section 206B of the Gramm-Leach-Bliley Act)';</i>	
<b>SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.</b>  (a) Clearing for Security-based Swaps- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding the following section after section 3A:	<b>SEC. 763. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.</b>  (a) Clearing for Security-based Swaps- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3B (as added by section 717 of this Act):	

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<p><b>SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.</b></p> <p>(a) In General-</p> <p>(1) STANDARD FOR CLEARING- A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.</p>	<p><b>SEC. 3C. CLEARING FOR SECURITY-BASED SWAPS.</b></p> <p>(a) Clearing Requirement-</p> <p>(1) SUBMISSION-</p> <p>(A) IN GENERAL- Except as provided in paragraphs (9) and (10), any person who is a party to a security-based swap shall submit such security-based swap for clearing to a clearing agency registered under section 17A of this title.</p>	
<p>(2) OPEN ACCESS- The rules of a clearing agency described in paragraph (1) shall--</p> <p>(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and</p> <p>(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.</p>	<p>(B) OPEN ACCESS- The rules of a registered clearing agency shall--</p> <p>(i) prescribe that all security-based swaps with the same terms and conditions are economically equivalent and may be offset with each other within the clearing agency; and</p> <p>(ii) provide for nondiscriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility, subject to the requirements of section 5(b).</p>	
<p>(b) Commission Review-</p> <p>(1) COMMISSION-INITIATED REVIEW-</p> <p>(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.</p> <p>(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).</p> <p>(2) SWAP SUBMISSIONS-</p> <p>(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such</p>	<p>(2) COMMISSION APPROVAL-</p> <p>(A) IN GENERAL- A clearing agency shall submit to the Commission for prior approval any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing, which submission the Commission shall make available to the public.</p>	

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<p>submission.</p> <p>“(B) The Commission shall--</p> <ul style="list-style-type: none"> <li>“(i) make available to the public any submission received under subparagraph (A);</li> <li>“(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and</li> <li>“(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.</li> </ul>		
<p>“(3) DEADLINE- The Commission shall make its determination under paragraph (2)(B) not later than 90 days after receiving a submission made under paragraph (2)(A), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.</p> <p>“(4) DETERMINATION-</p> <ul style="list-style-type: none"> <li>“(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 5b(c)(2).</li> <li>“(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors: <ul style="list-style-type: none"> <li>“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.</li> <li>“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.</li> <li>“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.</li> <li>“(iv) The effect on competition, including appropriate fees and charges applied to</li> </ul> </li> </ul>	<p>“(C) APPROVAL- <i>The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with the requirements of section 17A. The Commission shall not approve any such request if the Commission does not make such finding.</i></p> <p>“(D) RULES- <i>The Commission shall adopt rules for a clearing agency's submission for approval, pursuant to this paragraph, of any group, category, type, or class of security-based swaps that the clearing agency seeks to accept for clearing.</i></p> <p>“(4) SECURITY-BASED SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING-</p> <p>“(A) RULEMAKING- <i>The Commission shall adopt rules to further identify any group, category, type, or class of security-based swaps not submitted for approval under paragraph (2) that the Commission deems should be accepted for clearing. In adopting such rules, the Commission shall take into account the following factors:</i></p> <ul style="list-style-type: none"> <li>“(i) <i>The extent to which any of the terms of the group, category, type, or class of security-based swaps, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.</i></li> <li>“(ii) <i>The volume of transactions in the group,</i></li> </ul>	

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<p>clearing.</p> <p>“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.</p> <p>“(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.</p> <p>“(5) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.</p>	<p><i>category, type, or class of security-based swaps.</i></p> <p><i>“(iii) The extent to which the terms of the group, category, type, or class of security-based swaps are similar to the terms of other agreements, contracts, or transactions that are cleared.</i></p> <p><i>“(iv) Whether any differences in the terms of the group, category, type, or class of security-based swaps, compared to other agreements, contracts, or transactions that are cleared, are of economic significance.</i></p> <p><i>“(v) Whether a clearing agency is prepared to clear the group, category, type, or class of security-based swaps and such clearing agency has in place effective risk management systems.</i></p> <p><i>“(vi) Any other factor the Commission determines to be appropriate.</i></p> <p><i>“(B) OTHER DESIGNATIONS- At any time after the adoption of the rules required under subparagraph (A), the Commission may separately designate a particular security-based swap or class of security-based swaps as subject to the clearing requirement of paragraph (1), taking into account the factors established in clauses (i) through (vi) of subparagraph (A) and the rules adopted in such subparagraph.</i></p> <p><i>“(C) IN GENERAL- In accordance with subparagraph (A), the Commission shall, consistent with the public interest, adopt rules under the expedited process described in subparagraph (D) to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.</i></p> <p><i>“(D) EXPEDITED RULEMAKING AUTHORITY-</i></p> <p><i>“(i) PROCEDURE- The promulgation of regulations under subparagraph (A) may be made without regard to--</i></p> <p><i>“(I) the notice and comment provisions of section 553 of title 5, United States Code; and</i></p> <p><i>“(II) chapter 35 of title 44, United States Code (commonly known as the ‘Paperwork Reduction Act’).</i></p>	

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	<p>(ii) AGENCY RULEMAKING- In carrying out subparagraph (A), the Commission shall use the authority provided under section 808 of title 5, United States Code.</p>	
<p>(c) Stay of Clearing Requirement-</p> <p>(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.</p>	<p>(3) STAY OF CLEARING REQUIREMENT- At any time after issuance of an approval pursuant to paragraph (2):</p> <p>(A) REVIEW PROCESS- The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the security-based swap, or the group, category, type, or class of security-based swaps, and the clearing arrangement.</p>	
<p>(2) DEADLINE- The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.</p>	<p>(B) DEADLINE- The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or the group, category, type, or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.</p>	
<p>(3) DETERMINATION- Upon completion of the review undertaken pursuant to paragraph (1), the Commission may--</p> <p>(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or</p> <p>(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.</p>	<p>(C) DETERMINATION- Upon completion of the review undertaken pursuant to subparagraph (A)--</p> <p>(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or the group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection if the Commission finds that such clearing--</p> <p>(I) is consistent with the requirements of section 17A; and</p> <p>(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this title;</p> <p>(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or the group, category, type, or class of security-</p>	

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	<p><i>based swaps; or</i>  <i>“(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then the Commission may still permit such security-based swap, or the group, category, type, or class of security-based swaps to be cleared.</i></p>	
<p>“(4) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.</p>	<p>“(D) RULES- <i>The Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency's clearing of a security-based swap, or a group, category, type, or class of security-based swaps that the Commission has accepted for clearing.</i></p>	
<p>“(d) Prevention of Evasion- The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.</p>	<p>“(5) PREVENTION OF EVASION-</p> <p>“(A) <i>IN GENERAL-</i> <i>The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this section.</i></p> <p>“(B) <i>DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS-</i> <i>To the extent the Commission finds that a particular security-based swap or any group, category, type, or class of security-based swaps that would otherwise be subject to mandatory clearing but no clearing agency has listed the security-based swap or the group, category, type, or class of security-based swaps for clearing, the Commission shall--</i></p> <p style="padding-left: 40px;"><i>“(i) investigate the relevant facts and circumstances;</i>  <i>“(ii) within 30 days issue a public report containing the results of the investigation; and</i>  <i>“(iii) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the security-based swap or the group, category, type, or class of security-based swaps.</i></p> <p>“(C) <i>EFFECT ON AUTHORITY-</i> <i>Nothing in this paragraph--</i></p> <p style="padding-left: 40px;"><i>“(i) authorize the Commission to require a</i></p>	

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	<p><i>clearing agency to list for clearing a security-based swap or any group, category, type, or class of security-based swaps if the clearing of the security-based swap or the group, category, type, or class of security-based swaps would adversely affect the business operations of the clearing agency, threaten the financial integrity of the clearing agency, or pose a systemic risk to the clearing agency; and</i></p> <p><i≯(ii) affect the authority of the Commission to enforce the open access provisions of paragraph (1) with respect to a security-based swap or the group, category, type, or class of security-based swaps that is listed for clearing by a clearing agency.</i></p>	
<p≯(e) Required Reporting-</p> <p≯(1) IN GENERAL- All security-based swaps that are not accepted for clearing by any clearing agency shall be reported either to a security-based swap repository described in subsection 13(n) or, if there is no security-based swap repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe. Counterparties to a security-based swap may agree which counterparty will report the security-based swap as required by this paragraph.</p> <p≯(2) SWAP DEALER DESIGNATION- With regard to security-based swaps where only 1 counterparty is a security-based swap dealer, the security-based swap dealer shall report the security-based swap as required by this subsection.</p>	<p≯(6) REQUIRED REPORTING-</p> <p≯(A) BOTH COUNTERPARTIES- Both counterparties to a security-based swap that is not cleared by any clearing agency shall report such a security-based swap either to a registered security-based swap repository described in section 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A.</p> <p≯(B) TIMING- Counterparties to a security-based swap shall submit the reports required under subparagraph (A) not later than such time period as the Commission may by rule or regulation prescribe.</p>	
<p≯(f) Reporting Transition Rules- Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:</p> <p≯(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and</p> <p≯(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of--</p> <p≯(A) 90 days after such effective date; or</p> <p≯(B) such other time after entering into the security-</p>	<p≯(7) TRANSITION RULES-</p> <p≯(A) REPORTING TRANSITION RULES- Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:</p> <p≯(i) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission not later than 180 days after the effective date of this section.</p> <p≯(ii) Security-based swaps entered into on or</p>	

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<p>based swap as the Commission may prescribe by rule or regulation.</p>	<p>after such date of enactment shall be reported to a registered security-based swap repository or the Commission not later than the later of--            `(I) 90 days after such effective date;            or            `(II) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.</p>	
<p>`(g) Clearing Transition Rules-            `(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).            `(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (f)(2).</p>	<p>`(B) CLEARING TRANSITION RULES-            `(i) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subparagraph (A)(i).            `(ii) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subparagraph (A)(ii).</p>	
	<p>`(8) TRADE EXECUTION-            `(A) IN GENERAL- With respect to transactions involving security-based swaps subject to the clearing requirement of paragraph (1), counterparties shall--            `(i) execute the transaction on an exchange;            or            `(ii) execute the transaction on a swap execution facility registered under section 3D or a swap execution facility that is exempt from registration under section 3D(e).            `(B) EXCEPTION- The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply--            `(i) if no national securities exchange or security-based swap execution facility makes the security-based swap available to trade; or            `(ii) to swap transactions where a commercial end user opts to use the clearing exemption under paragraph (10).</p>	
	<p>`(9) REQUIRED EXEMPTION- Subject to paragraph (4), the Commission shall exempt a security-based swap from the</p>	

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	<p><i>requirements of paragraphs (1) and (8) and any rules issued under this subsection, if no clearing agency registered under this Act will accept the security-based swap from clearing.</i></p>	
<p>(h) Exceptions-</p> <p>(1) IN GENERAL- The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap--</p> <p>(A) is not a security-based swap dealer or major security-based swap participant;</p> <p>(B) is using security-based swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and</p> <p>(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.</p>	<p>(10) END USER CLEARING EXEMPTION-</p> <p>(A) DEFINITION OF COMMERCIAL END USER-</p> <p>(i) IN GENERAL- In this paragraph, the term 'commercial end user' means any person other than a financial entity described in clause (ii) who, as its primary business activity, owns, uses, produces, processes, manufactures, distributes, merchandises, or markets services or commodities (which shall include coal, natural gas, electricity, ethanol, crude oil, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.</p> <p>(ii) FINANCIAL ENTITY- The term 'financial entity' means--</p> <p>(I) a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant;</p> <p>(II) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956;</p> <p>(III) a person predominantly engaged in activities that are financial in nature;</p> <p>(IV) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) or a commodity pool as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or</p> <p>(V) a person that is registered or required to be registered with the Commission, but does not include a public company which registers its securities with the Commission.</p> <p>(B) END USER CLEARING EXEMPTION-</p> <p>(i) IN GENERAL- Subject to clause (ii), in</p>	

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	<p><i>the event that a security-based swap is subject to the mandatory clearing requirement under paragraph (1), and 1 of the counterparties to the security-based swap is a commercial end user that counterparty--</i></p> <p><i>    (I)(aa) may elect not to clear the security-based swap, as required under paragraph (1); or</i></p> <p><i>    (bb) may elect to require clearing of the security-based swap; and</i></p> <p><i>    (II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the clearing agency at which the security-based swap will be cleared.</i></p> <p><i>    (ii) LIMITATION- A commercial end user may only make an election under clause (i) if the end user is using the security-based swap to hedge its own commercial risk.</i></p> <p><b>(C) TREATMENT OF AFFILIATES-</b></p> <p><i>    (i) IN GENERAL- An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the commercial end user) may make an election under subparagraph (B)(i) only if the affiliate, acting on behalf of the commercial end user and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the commercial end user parent or other affiliates of the commercial end user that is not a financial entity.</i></p> <p><i>    (ii) PROHIBITION RELATING TO CERTAIN AFFILIATES- An affiliate of a commercial end user shall not use the exemption under subparagraph (B) if the affiliate is--</i></p> <p><i>        (I) a security-based swap dealer;</i></p> <p><i>        (II) a security-based security-based swap dealer;</i></p> <p><i>        (III) a major security-based swap participant;</i></p>	

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	<p> <i>           (IV) a major security-based security-based swap participant;            (V) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for paragraph (1) or (7) of subsection (c) of that section 3 (15 U.S.C. 80a-3(c));            (VI) a commodity pool;            (VII) a bank holding company with over \$50,000,000,000 in consolidated assets; or         </i> </p>	
<p> <i>           (2) ABUSE OF EXCEPTION- The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.         </i> </p>	<p> <i>           (VIII) an affiliate of any entity described in subclauses (I) through (VII).            (iii) ABUSE OF EXEMPTION- The Commission may prescribe such rules, or issue interpretations of the rules, as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B).         </i> </p>	
<p> <i>           (3) OPTION TO CLEAR- The application of the clearing exception in paragraph (1) is solely at the discretion the counterparty to the swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).'.         </i> </p>	<p> <i>           (D) OPTION TO CLEAR-            (i) SECURITY-BASED SWAPS REQUIRED TO BE CLEARED ENTERED INTO WITH A FINANCIAL ENTITY- With respect to any securities-based swap that is required to be cleared by a clearing agency and entered into by a securities-based swap dealer or a major securities-based swap participant with a financial entity, the financial entity shall have the sole right to select the clearing agency at which the securities-based swap will be cleared.            (ii) SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED ENTERED INTO WITH A FINANCIAL ENTITY OR COMMERCIAL END USER- With respect to any securities-based swap that is not required to be cleared by a clearing agency and entered into by a securities-based swap dealer         </i> </p>	

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	<p>or a major securities-based swap participant with a financial entity or commercial end user, the financial entity or commercial end user--</p> <p>(I) may elect to require clearing of the securities-based swap; and</p> <p>(II) shall have the sole right to select the clearing agency at which the securities-based swap will be cleared.</p> <p>(b) <i>Audit Committee Approval- Exemptions from the requirements of this section to clear or trade a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 or that is required to file reports pursuant to section 15(d), only if the issuer's audit committee has reviewed and approved the issuer's decision to enter into security-based swaps that are subject to such exemptions.</i></p> <p>(c) <i>Public Availability of Security-based Swap Transaction Data-</i></p> <p>(1) <i>IN GENERAL-</i></p> <p>(A) <i>DEFINITION OF REAL-TIME PUBLIC REPORTING- In this paragraph, the term 'real-time public reporting' means to report data relating to a security-based swap transaction as soon as technologically practicable after the time at which the security-based swap transaction has been executed.</i></p> <p>(B) <i>PURPOSE- The purpose of this section is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.</i></p> <p>(C) <i>GENERAL RULE- The Commission is authorized to provide by rule for the public availability of security-based swap transaction and pricing data as follows:</i></p> <p>(i) <i>With respect to those security-based swaps that are subject to the mandatory clearing requirement described in subsection (a)(1) (including those security-based swaps that are exempted from those requirements), the Commission shall require real-time public reporting for such transactions.</i></p> <p>(ii) <i>With respect to those security-based</i></p>	

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	<p><i>swaps that are not subject to the mandatory clearing requirement described in subsection (a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.</i></p> <p><i>^(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under subsection (a), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such security-based swap trading volumes and positions.</i></p> <p><i>^(iv) With respect to security-based swaps that are exempt from the requirements of subsection (a)(1), but are subject to the requirements of subsection (a)(8), the Commission shall require real-time public reporting for such transactions.</i></p> <p><b>^(D) REGISTERED ENTITIES AND PUBLIC REPORTING-</b> <i>The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.</i></p> <p><b>^(E) RULEMAKING REQUIRED-</b> <i>With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions--</i></p> <ul style="list-style-type: none"> <li><i>^(i) to ensure such information does not identify the participants;</i></li> <li><i>^(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;</i></li> <li><i>^(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and</i></li> <li><i>^(iv) that take into account whether the public disclosure will materially reduce market</i></li> </ul>	

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	<p>liquidity.</p> <p><i>“(F) TIMELINESS OF REPORTING- Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.</i></p> <p><i>“(2) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA-</i></p> <p><i>“(A) IN GENERAL- In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to--</i></p> <p><i>“(i) the trading and clearing in the major security-based swap categories; and</i></p> <p><i>“(ii) the market participants and developments in new products.</i></p> <p><i>“(B) USE; CONSULTATION- In preparing a report under subparagraph (A), the Commission shall--</i></p> <p><i>“(i) use information from security-based swap data repositories and clearing agencies; and</i></p> <p><i>“(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.</i></p> <p><i>“(C) TRANSITION RULE FOR PREENACTMENT SECURITY-BASED SWAPS-</i></p> <p><i>“(i) SECURITY-BASED SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010- Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than--</i></p> <p><i>“(I) 30 days after the date of issuance of the interim final rule; or</i></p> <p><i>“(II) such other period as the Commission determines to be</i></p>	

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	<p style="text-align: center;"><i>appropriate.</i></p> <p style="text-align: center;">`<i>(ii) COMMISSION RULEMAKING- The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in clause (i).</i></p> <p style="text-align: center;">`<i>(D) EFFECTIVE DATE- The reporting provisions described in this paragraph shall be effective upon the date of enactment of this section.</i></p>	
<p>(b) Clearing Agency Requirements- Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:</p> <p>`(g) Registration Requirement- It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a swap.</p>	<p><i>(b) Clearing Agency Requirements- Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:</i></p> <p><i>`(g) Registration Requirement- It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.</i></p>	
<p>`(h) Voluntary Registration- A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.</p>	<p><i>`(h) Voluntary Registration- A person that clears agreements, contracts, or transactions that are not required to be cleared under this title may register with the Commission as a clearing agency.</i></p>	
<p>`(i) Existing Banks and Derivatives Clearing Organizations- A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.</p>		

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<p>^(j) Reporting-</p> <p>^(1) IN GENERAL- A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.</p> <p>^(2) PUBLIC INFORMATION- A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.</p>		
	<p>^(i) <i>Standards for Clearing Agencies Clearing Security-based Swap Transactions- To be registered and to maintain registration as a clearing agency that clears security-based swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.</i></p>	
<p>^(k) Designation of Compliance Officer-</p> <p>^(1) IN GENERAL- Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.</p> <p>^(2) DUTIES- The compliance officer shall--</p> <p>^(A) report directly to the board or to the senior officer</p>	<p>^(d) <i>Designation of Chief Compliance Officer-</i></p> <p>^(1) <i>IN GENERAL- Each registered clearing agency shall designate an individual to serve as a chief compliance officer.</i></p> <p>^(2) <i>DUTIES- The chief compliance officer shall--</i></p> <p>^(A) <i>report directly to the board or to the senior officer of the clearing agency;</i></p>	

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<p>of the clearing agency;            `(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;            `(C) be responsible for administering the policies and procedures required to be established pursuant to this section;            `(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and            `(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.</p>	<p><i>`(B) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;            `(C) be responsible for administering each policy and procedure that is required to be established pursuant to this section;            `(D) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;            `(E) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any--                `(i) compliance office review;                `(ii) look-back;                `(iii) internal or external audit finding;                `(iv) self-reported error; or                `(v) validated complaint; and            `(F) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i></p>	
<p>`(3) ANNUAL REPORTS REQUIRED- The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.</p>	<p><i>`(3) ANNUAL REPORTS-            `(A) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--                `(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and                `(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).            `(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--                `(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission</i></p>	

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	<p><i>pursuant to this section; and</i>  <i>“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.</i></p>	
<p>“(l) Standards for Clearing Agencies Clearing Swap Transactions- To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.</p>		
<p>“(m) Rules- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.</p>	<p><i>“(j) Rules- The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this title.</i></p>	
<p>“(n) Exemptions-  “(1) IN GENERAL- The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.  “(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading</p>	<p><i>“(k) Exemptions-  “(1) IN GENERAL- The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.  “(2) DERIVATIVES CLEARING ORGANIZATIONS- A person that is required to be registered as a derivatives clearing organization under the Commodity Exchange Act, whose principal business is clearing commodity futures and options on commodity futures transactions and swaps and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity</i></p>	

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<p>Commission.'.</p>	<p><i>Exchange Act (7 U.S.C. 1 et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.</i></p> <p><i>“(1) Modification of Core Principles- The Commission may conform the core principles established in this section to reflect evolving United States and international standards.’.</i></p>	
<p>(c) Execution of Security-based Swaps- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 5 the following:</p> <p><b>“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.</b></p> <p>“(a) Execution Transparency-</p> <p>“(1) REQUIREMENT- A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.</p> <p>“(2) EXCEPTIONS- The requirement of paragraph (1) shall not apply to a security-based swap if no national securities exchange or swap execution facility makes the security-based swap available for trading.</p> <p>“(3) REQUIRED REPORTING- If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of paragraph (1).</p> <p>“(b) Exchange Trading- In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges of contracts, agreements, or transactions that would be swaps but for the trading of such contracts, agreements or transactions on such a national securities exchange.’.</p>		
<p>(d) Swap Execution Facilities- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 3B (as added by subsection (a)) the following:</p>	<p><i>(c) Security-based Swap Execution Facilities- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C (as added by subsection (a) of this section) the following:</i></p>	

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<p><b>SEC. 3C. SWAP EXECUTION FACILITIES.</b></p> <p>(a) Registration- No person may operate a facility for the trading of security-based swaps unless the facility is registered as a swap execution facility under this section.</p> <p>(b) Requirements for Trading-</p> <p>(1) IN GENERAL- A swap execution facility that is registered under subsection (a) may list for trading any security-based swap.</p> <p>(2) RULES FOR TRADING THROUGH THE FACILITY- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a security-based swap to be traded through the facilities of an exchange or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a security-based swap, notwithstanding section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.</p> <p>(c) Trading by Exchanges- An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.</p>	<p><b>SEC. 3D. SECURITY-BASED SWAP EXECUTION FACILITIES.</b></p> <p>(a) Registration-</p> <p>(1) IN GENERAL- No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section.</p> <p>(2) DUAL REGISTRATION- Any person that is registered as a security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap execution facility.</p> <p>(b) Trading and Trade Processing- A security-based swap execution facility that is registered under subsection (a) may--</p> <p>(1) make available for trading any security-based swap; and</p> <p>(2) facilitate trade processing of any security-based swap.</p> <p>(c) Identification of Facility Used To Trade Security-based Swaps by National Securities Exchanges- A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.</p>	
<p>(d) Core Principles for Swap Execution Facilities-</p> <p>(1) IN GENERAL- To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.</p>	<p>(d) Core Principles for Security-based Swap Execution Facilities-</p> <p>(1) COMPLIANCE WITH CORE PRINCIPLES-</p> <p>(A) IN GENERAL- To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with--</p> <p>(i) the core principles described in this subsection; and</p> <p>(ii) any requirement that the Commission may impose by rule or regulation.</p> <p>(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP EXECUTION FACILITY- Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in subparagraph (A) shall have reasonable</p>	

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	<i>discretion in establishing the manner in which it complies with the core principles described in this subsection.</i>	
<p>“(2) COMPLIANCE WITH RULES- The swap execution facility shall--</p> <p>“(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and</p> <p>“(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to--</p> <p>“(i) provide market participants with impartial access to the market; and</p> <p>“(ii) capture information that may be used in establishing whether rule violations have occurred.</p>	<p>“(2) COMPLIANCE WITH RULES- A security-based swap execution facility shall--</p> <p>“(A) monitor and enforce compliance with any rule established by such security-based swap execution facility, including--</p> <p>“(i) the terms and conditions of the security-based swaps traded or processed on or through the facility; and</p> <p>“(ii) any limitation on access to the facility;</p> <p>“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means--</p> <p>“(i) to provide market participants with impartial access to the market; and</p> <p>“(ii) to capture information that may be used in establishing whether rule violations have occurred; and</p> <p>“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.</p>	
<p>“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION- The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.</p>	<p>“(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION- The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.</p>	
<p>“(4) MONITORING OF TRADING- The swap execution facility shall--</p> <p>“(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and</p> <p>“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading</p>	<p>“(4) MONITORING OF TRADING AND TRADE PROCESSING- The security-based swap execution facility shall--</p> <p>“(A) establish and enforce rules or terms and conditions defining, or specifications detailing--</p> <p>“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and</p> <p>“(ii) procedures for trade processing of security-based swaps on or through the</p>	

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<p>and comprehensive and accurate trade reconstructions.</p>	<p><i>facilities of the security-based swap execution facility; and</i>  <i>“(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.</i></p>	
<p>“(5) ABILITY TO OBTAIN INFORMATION- The swap execution facility shall--  “(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;  “(B) provide the information to the Commission upon request; and  “(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.</p>	<p>“(5) ABILITY TO OBTAIN INFORMATION- The security-based swap execution facility shall--  “(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;  “(B) provide the information to the Commission on request; and  “(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.</p>	
	<p>“(6) POSITION LIMITS OR ACCOUNTABILITY-  “(A) IN GENERAL- To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a security-based swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.  “(B) POSITION LIMITS- For any contract or agreement that is subject to a position limitation established by the Commission pursuant to section 10B, the security-based swap execution facility shall set its position limitation at a level no higher than the limitation established by the Commission.  “(C) POSITION ENFORCEMENT- For any contract or agreement that is subject to a position limitation established by the Commission pursuant to section 10B, a security-based swap execution facility shall reject any proposed security-based swap transaction if, based on information readily available to a security-based swap execution facility, any proposed security-based swap transaction would cause a security-based</p>	

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	<i>swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.</i>	
<p>“(6) FINANCIAL INTEGRITY OF TRANSACTIONS- The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps pursuant to section 3B.</p>	<p>“(7) FINANCIAL INTEGRITY OF TRANSACTIONS- The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1).</p>	
<p>“(7) EMERGENCY AUTHORITY- The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.</p>	<p>“(8) EMERGENCY AUTHORITY- The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.</p>	
<p>“(8) TIMELY PUBLICATION OF TRADING INFORMATION- The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.</p>	<p>“(9) TIMELY PUBLICATION OF TRADING INFORMATION-  “(A) IN GENERAL- The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.  “(B) CAPACITY OF SECURITY-BASED SWAP EXECUTION FACILITY- The security-based swap execution facility shall be required to have the capacity to electronically capture trade information with respect to transactions executed on the facility.</p>	
<p>“(9) RECORDKEEPING AND REPORTING- The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and</p>	<p>“(10) RECORDKEEPING AND REPORTING-  “(A) IN GENERAL- A security-based swap execution facility shall--  “(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and  “(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to</p>	

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<p>security-based swap repositories.</p>	<p><i>be necessary or appropriate for the Commission to perform the duties of the Commission under this title.</i></p> <p><i>“(B) REQUIREMENTS- The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.</i></p>	
	<p><i>“(11) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this title, the security-based swap execution facility shall not--</i></p> <p><i>“(A) adopt any rules or taking any actions that result in any unreasonable restraint of trade; or</i></p> <p><i>“(B) impose any material anticompetitive burden on trading or clearing.</i></p>	
<p><i>“(10) CONFLICTS OF INTEREST- The swap execution facility shall--</i></p> <p><i>“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and</i></p> <p><i>“(B) establish a process for resolving the conflicts of interest.</i></p>	<p><i>“(12) CONFLICTS OF INTEREST- The security-based swap execution facility shall--</i></p> <p><i>“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and</i></p> <p><i>“(B) establish a process for resolving the conflicts of interest.</i></p>	
<p><i>“(11) FINANCIAL RESOURCES- The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.</i></p>	<p><i>“(13) FINANCIAL RESOURCES-</i></p> <p><i>“(A) IN GENERAL- The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.</i></p> <p><i>“(B) DETERMINATION OF RESOURCE ADEQUACY- The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources--</i></p> <p><i>“(i) enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and</i></p> <p><i>“(ii) exceeds the total amount that would enable the security-based swap execution</i></p>	

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	<i>facility to cover the operating costs of the security-based swap execution facility for a 1-year period, as calculated on a rolling basis.</i>	
<p>“(12) SYSTEM SAFEGUARDS- The swap execution facility shall--</p> <p>“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;</p> <p>“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and</p> <p>“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.</p>	<p>“(14) SYSTEM SAFEGUARDS- The security-based swap execution facility shall--</p> <p>“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that--</p> <p style="padding-left: 20px;">“(i) are reliable and secure; and</p> <p style="padding-left: 20px;">“(ii) have adequate scalable capacity;</p> <p>“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for--</p> <p style="padding-left: 20px;">“(i) the timely recovery and resumption of operations; and</p> <p style="padding-left: 20px;">“(ii) the fulfillment of the responsibilities and obligation of the security-based swap execution facility; and</p> <p>“(C) periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued--</p> <p style="padding-left: 20px;">“(i) order processing and trade matching;</p> <p style="padding-left: 20px;">“(ii) price reporting;</p> <p style="padding-left: 20px;">“(iii) market surveillance; and</p> <p style="padding-left: 20px;">“(iv) maintenance of a comprehensive and accurate audit trail.</p>	
<p>“(13) DESIGNATION OF COMPLIANCE OFFICER-</p> <p>“(A) IN GENERAL- Each swap execution facility shall designate an individual to serve as a compliance officer.</p> <p>“(B) DUTIES- The compliance officer--</p> <p style="padding-left: 20px;">“(i) shall report directly to the board or to the senior officer of the facility; and</p> <p style="padding-left: 20px;">“(ii) shall--</p> <p style="padding-left: 40px;">“(I) review compliance with the core principles in section 3B(e).</p> <p style="padding-left: 40px;">“(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or</p>	<p>“(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER-</p> <p>“(A) IN GENERAL- Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.</p> <p>“(B) DUTIES- The chief compliance officer shall--</p> <p style="padding-left: 20px;">“(i) report directly to the board or to the senior officer of the facility;</p> <p style="padding-left: 20px;">“(ii) review compliance with the core principles in this subsection;</p> <p style="padding-left: 20px;">“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that</p>	

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<p>the senior officer of the facility, resolve any conflicts of interest that may arise;</p> <p>`(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and</p> <p>`(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and</p> <p>`(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints and to establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.</p>	<p>may arise;</p> <p>`(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;</p> <p>`(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section;</p> <p>`(vi) establish procedures for the remediation of noncompliance issues found during--</p> <p style="padding-left: 20px;">`(I) compliance office reviews;</p> <p style="padding-left: 20px;">`(II) look backs;</p> <p style="padding-left: 20px;">`(III) internal or external audit findings;</p> <p style="padding-left: 20px;">`(IV) self-reported errors; or</p> <p style="padding-left: 20px;">`(V) through validated complaints; and</p> <p>`(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</p>	
<p>`(C) ANNUAL REPORTS REQUIRED- The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.</p>	<p>`(C) ANNUAL REPORTS-</p> <p>`(i) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</p> <p style="padding-left: 20px;">`(I) the compliance of the security-based swap execution facility with this title; and</p> <p style="padding-left: 20px;">`(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based security-based swap execution facility.</p> <p>`(ii) REQUIREMENTS- The chief compliance officer shall--</p> <p style="padding-left: 20px;">`(I) submit each report described in clause (i) with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the</p>	

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	<p><i>Commission pursuant to this section; and</i>  <i>(II) include in the report a certification that, under penalty of law, the report is accurate and complete.</i></p>	
<p>(e) Exemptions- The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.</p>	<p><i>(e) Exemptions- The Commission may exempt, conditionally or unconditionally, a security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.</i></p>	
<p>(f) Rules- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.'</p>	<p><i>(f) Rules- The Commission shall prescribe rules governing the regulation of security-based swap execution facilities under this section.'</i></p>	
<p>(e) Segregation of Assets Held as Collateral in Swap Transactions- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended by adding after section 3C (as added by subsection (b) the following:</p> <p><b>SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.</b></p> <p>(a) Over-the-counter Swaps- At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a derivatives clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. If a security-based swap counterparty is a security-based swap dealer or major security-based swap participant who owns more than 20 percent of, or has more</p>	<p><i>(d) Segregation of Assets Held as Collateral in Security-based Swap Transactions- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3D (as added by subsection (b)) the following:</i></p> <p><b>SEC. 3E. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.</b></p> <p><i>(a) Registration Requirement- It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer or to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.</i></p> <p><i>(b) Cleared Security-based Swaps-</i>  <i>(1) SEGREGATION REQUIRED- A broker, dealer, or security-based swap dealer shall treat and deal with all money,</i></p>	

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<p>than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the security-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.</p> <p>(b) Further Audit Reporting- If a security-based swap dealer does not segregate funds pursuant to the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.</p>	<p><i>securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.</i></p> <p><i>(2) COMMINGLING PROHIBITED- Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or be used to margin, secure, or guarantee any trades or contracts of any security-based swaps customer or person other than the person for whom the same are held.</i></p> <p><i>(c) Exceptions-</i></p> <p><i>(1) USE OF FUNDS-</i></p> <p><i>(A) IN GENERAL- Notwithstanding subsection (b), money, securities, and property of a security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.</i></p> <p><i>(B) WITHDRAWAL- Notwithstanding subsection (b), such share of the money, securities, and property described in subparagraph (A) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared security-based swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared security-based swap.</i></p> <p><i>(2) COMMISSION ACTION- Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the</i></p>	

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	<p><i>security-based swaps customer of the broker, dealer, or security-based swap dealer.</i></p> <p><i>“(d) Permitted Investments- Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.</i></p> <p><i>“(e) Prohibition- It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in subsection (b) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing broker, dealer, or security-based swap dealer or any person other than the swaps customer of the broker, dealer, or security-based swap dealer.’.</i></p>	
(f) Trading in Security-based Swaps- Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:	<i>(e) Trading in Security-based Swaps- Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:</i>	
“(1) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).’.	<i>“(1) Security-based Swaps- It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).’.</i>	
(g) Additions of Security-based Swaps to Certain Enforcement Provisions- Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)-(3)) are amended to read as follows:	<i>(f) Additions of Security-based Swaps to Certain Enforcement Provisions- Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:</i>	
“(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security; or	<p><i>“(1) any transaction in connection with any security whereby any party to such transaction acquires--</i></p> <p><i>“(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;</i></p> <p><i>“(B) any security futures product on the security; or</i></p> <p><i>“(C) any security-based swap involving the security or the issuer of the security;</i></p>	
“(2) any transaction in connection with any security with	<i>“(2) any transaction in connection with any security with</i>	

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<p>relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or</p>	<p><i>relation to which such person has, directly or indirectly, any interest in any--</i>  <i>ˆ(A) such put, call, straddle, option, or privilege;</i>  <i>ˆ(B) such security futures product; or</i>  <i>ˆ(C) such security-based swap; or</i></p>	
<p>ˆ(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.'</p>	<p><i>ˆ(3) any transaction in any security for the account of any person who such person has reason to believe has, and who actually has, directly or indirectly, any interest in any--</i>  <i>ˆ(A) such put, call, straddle, option, or privilege;</i>  <i>ˆ(B) such security futures product with relation to such security; or</i>  <i>ˆ(C) any security-based swap involving such security or the issuer of such security.'</i></p>	
<p>(h) Rulemaking Authority to Prevent Fraud, Manipulation and Deceptive Conduct in Security-based Swaps- Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:</p>	<p><i>(g) Rulemaking Authority To Prevent Fraud, Manipulation and Deceptive Conduct in Security-based Swaps- Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:</i></p>	
<p>ˆ(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.'</p>	<p><i>ˆ(j) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.'</i></p>	
<p>(i) Position Limits and Position Accountability for Security-based Swaps- The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-1) the following new section:</p> <p><b>ˆSEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.</b></p> <p>ˆ(a) Position Limits- As a means reasonably designed to prevent fraud</p>	<p><i>(h) Position Limits and Position Accountability for Security-based Swaps- The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-1) the following:</i></p> <p><b><i>ˆSEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.</i></b></p> <p><i>ˆ(a) Position Limits- As a means reasonably designed to prevent fraud</i></p>	

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<p>and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in--</p> <p>    (1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or</p> <p>    (2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.</p>	<p><i>and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in--</i></p> <p><i>(1) any security-based swap and any security or loan or group of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in paragraph (68) of section 3(a), and any other instrument relating to such security or loan or group or index of securities or loans; or</i></p> <p><i>(2) any security-based swap and--</i></p> <p><i>(A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in paragraph (68) of section 3(a); and</i></p> <p><i>(B) any other instrument relating to the same security or group or index of securities described under subparagraph (A).</i></p>	
<p>(b) Exemptions- The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.</p>	<p><i>(b) Exemptions- The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.</i></p>	
<p>(c) SRO Rules-</p> <p>    (1) IN GENERAL- As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization--</p> <p>        (A) to adopt rules regarding the size of positions in any security-based swap that may be held by--</p> <p>            (i) any member of such self-regulatory organization; or</p> <p>            (ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and</p> <p>        (B) to adopt rules reasonably designed to ensure</p>	<p><i>(c) SRO Rules-</i></p> <p><i>(1) IN GENERAL- As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization--</i></p> <p><i>(A) to adopt rules regarding the size of positions in any security-based swap that may be held by--</i></p> <p><i>(i) any member of such self-regulatory organization; or</i></p> <p><i>(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and</i></p> <p><i>(B) to adopt rules reasonably designed to ensure</i></p>	

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<p>compliance with requirements prescribed by the Commission under subsection (c)(1)(A).</p>	<p><i>compliance with requirements prescribed by the Commission under this subsection.</i></p>	
<p>“(2) REQUIREMENT TO AGGREGATE POSITIONS- In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in--</p> <p>“(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or</p> <p>“(B)(i) any security-based swap; and</p> <p>“(ii) any security-based swap and any other instrument relating to the same security or group or index of securities.</p>	<p><i>“(2) REQUIREMENT TO AGGREGATE POSITIONS- In establishing the limits under paragraph (1), the self-regulatory organization may require such member or person to aggregate positions in--</i></p> <p><i>“(A) any security-based swap and any security or loan or group or narrow-based security narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or</i></p> <p><i>“(B)(i) any security-based swap; and</i></p> <p><i>“(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.</i></p>	
<p>“(d) Large Trader Reporting- The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.’.</p>	<p><i>“(d) Large Trader Reporting- The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.’.</i></p>	
<p>(j) Public Reporting and Repositories for Security-based Swaps- Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:</p> <p>“(m) Public Reporting of Aggregate Security-based Swap Data-</p> <p>“(1) IN GENERAL- The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the</p>	<p><i>(i) Public Reporting and Repositories for Security-based Swaps- Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:</i></p> <p><i>“(m) Public Availability of Security-based Swap Transaction Data-</i></p> <p><i>“(1) IN GENERAL-</i></p> <p><i>“(A) DEFINITION OF REAL-TIME PUBLIC REPORTING- In this paragraph, the term ‘real-time public reporting’ means to report data relating to a security-based swap transaction as soon as</i></p>	

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<p>sources set forth in paragraph (3).</p> <p>“(2) <b>DESIGNEE OF THE COMMISSION</b>- The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).</p> <p>“(3) <b>SOURCES OF INFORMATION</b>- The sources of the information to be publicly reported as described in paragraph (1) are--</p> <p>    “(A) clearing agencies pursuant to section 3A;</p> <p>    “(B) security-based swap repositories pursuant to subsection (n); and</p> <p>    “(C) reports received by the Commission pursuant to section 13A.</p>	<p><i>technologically practicable after the time at which the security-based swap transaction has been executed.</i></p> <p>“(B) <b>PURPOSE</b>- <i>The purpose of this section is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.</i></p> <p>“(C) <b>GENERAL RULE</b>- <i>The Commission is authorized to provide by rule for the public availability of security-based swap transaction and pricing data as follows:</i></p> <p>    “(i) <i>With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 3C(a)(1) (including those security-based swaps that are exempted from the requirement pursuant to section 3C(a)(10)), the Commission shall require real-time public reporting for such transactions.</i></p> <p>    “(ii) <i>With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in subsection section 3C(a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.</i></p> <p>    “(iii) <i>With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 3C(a), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such security-based swap trading volumes and positions.</i></p> <p>    “(iv) <i>With respect to security-based swaps that are exempt from the requirements of section 3C(a)(1), but are subject to the requirements of section 3C(a)(8), the Commission shall require real-time public reporting for such transactions.</i></p> <p>“(D) <b>REGISTERED ENTITIES AND PUBLIC</b></p>	

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	<p><i>REPORTING- The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.</i></p> <p><i>“(E) RULEMAKING REQUIRED- With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions--</i></p> <ul style="list-style-type: none"> <li><i>“(i) to ensure such information does not identify the participants;</i></li> <li><i>“(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;</i></li> <li><i>“(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and</i></li> <li><i>“(iv) that take into account whether the public disclosure will materially reduce market liquidity.</i></li> </ul> <p><i>“(F) TIMELINESS OF REPORTING- Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.</i></p> <p><b>“(2) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA-</b></p> <p><i>“(A) IN GENERAL- In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to--</i></p> <ul style="list-style-type: none"> <li><i>“(i) the trading and clearing in the major security-based swap categories; and</i></li> <li><i>“(ii) the market participants and developments in new products.</i></li> </ul> <p><i>“(B) USE; CONSULTATION- In preparing a report under subparagraph (A), the Commission shall--</i></p> <ul style="list-style-type: none"> <li><i>“(i) use information from security-based swap data repositories and derivatives clearing organizations; and</i></li> </ul>	

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	<p>(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.</p>	
<p>(n) Security-based Swap Repositories-</p> <p>(1) REGISTRATION REQUIREMENT-</p> <p>(A) IN GENERAL- It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.</p>	<p>(n) Security-based Swap Data Repositories-</p> <p>(1) REGISTRATION REQUIREMENT- It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.</p>	
<p>(B) INSPECTION AND EXAMINATION-</p> <p>Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.</p>	<p>(2) INSPECTION AND EXAMINATION- Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.</p>	
	<p>(3) COMPLIANCE WITH CORE PRINCIPLES-</p> <p>(A) IN GENERAL- To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with--</p> <p>(i) the core principles described in this subsection; and</p> <p>(ii) any requirement that the Commission may impose by rule or regulation.</p> <p>(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP DATA REPOSITORY- Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.</p>	
<p>(2) STANDARD SETTING-</p> <p>(A) DATA IDENTIFICATION- The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.</p>	<p>(4) STANDARD SETTING-</p> <p>(A) DATA IDENTIFICATION- The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.</p>	

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<p>“(B) DATA COLLECTION AND MAINTENANCE- The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.</p>	<p>“(B) DATA COLLECTION AND MAINTENANCE- <i>The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.</i></p>	
<p>“(C) COMPARABILITY- The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.</p>	<p>“(C) COMPARABILITY- <i>The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.</i></p>	
<p>“(3) DUTIES- A security-based swap repository shall--</p> <p>“(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);</p> <p>“(B) maintain such data in such form and manner and for such period as may be required by the Commission;</p> <p>“(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and</p> <p>“(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.</p> <p>“(4) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.</p> <p>“(5) EXEMPTIONS- The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is</p>	<p>“(5) DUTIES- <i>A security-based swap data repository shall--</i></p> <p>“(A) <i>accept data prescribed by the Commission for each security-based swap under subsection (b);</i></p> <p>“(B) <i>confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;</i></p> <p>“(C) <i>maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;</i></p> <p>“(D)(i) <i>provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and</i></p> <p>“(ii) <i>provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);</i></p> <p>“(E) <i>at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;</i></p> <p>“(F) <i>maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and</i></p> <p>“(G) <i>on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available all data obtained by the security-based swap data repository, including individual counterparty trade and position data, to--</i></p> <p>“(i) <i>each appropriate prudential regulator;</i></p>	

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<p>subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.'</p>	<p> <i>           (ii) the Financial Stability Oversight Council;            (iii) the Commodity Futures Trading Commission;            (iv) the Department of Justice; and            (v) any other person that the Commission determines to be appropriate, including--                (I) foreign financial supervisors (including foreign futures authorities);                (II) foreign central banks; and                (III) foreign ministries.            (H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT- Before the security-based swap data repository may share information with any entity described in subparagraph (G)--                (i) the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and                (ii) each entity shall agree to indemnify the security-based swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 24.            (6) DESIGNATION OF CHIEF COMPLIANCE OFFICER-                (A) IN GENERAL- Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.                (B) DUTIES- The chief compliance officer shall--                    (i) report directly to the board or to the senior officer of the security-based swap data repository;                    (ii) review the compliance of the security-based swap data repository with respect to the core principles described in paragraph (7);                    (iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap         </i> </p>	

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	<p><i>data repository, resolve any conflicts of interest that may arise;</i></p> <p><i>`(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</i></p> <p><i>`(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;</i></p> <p><i>`(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any--</i></p> <ul style="list-style-type: none"> <li><i>`(I) compliance office review;</i></li> <li><i>`(II) look-back;</i></li> <li><i>`(III) internal or external audit finding;</i></li> <li><i>`(IV) self-reported error; or</i></li> <li><i>`(V) validated complaint; and</i></li> </ul> <p><i>`(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i></p> <p><i>`(C) ANNUAL REPORTS-</i></p> <ul style="list-style-type: none"> <li><i>`(i) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</i></li> <ul style="list-style-type: none"> <li><i>`(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this title (including regulations); and</i></li> <li><i>`(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).</i></li> </ul> <li><i>`(ii) REQUIREMENTS- A compliance report under clause (i) shall--</i></li> <ul style="list-style-type: none"> <li><i>`(I) accompany each appropriate financial report of the security-based</i></li> </ul> </ul>	

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	<p><i>swap data repository that is required to be furnished to the Commission pursuant to this section; and</i></p> <p><i>“(II) include a certification that, under penalty of law, the compliance report is accurate and complete.</i></p> <p><b>“(7) CORE PRINCIPLES APPLICABLE TO SECURITY-BASED SWAP DATA REPOSITORIES-</b></p> <p><b>“(A) ANTITRUST CONSIDERATIONS-</b> <i>Unless necessary or appropriate to achieve the purposes of this title, the swap data repository shall not--</i></p> <p><i>“(i) adopt any rule or take any action that results in any unreasonable restraint of trade;</i></p> <p><i>or</i></p> <p><i>“(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.</i></p> <p><b>“(B) GOVERNANCE ARRANGEMENTS-</b> <i>Each security-based swap data repository shall establish governance arrangements that are transparent--</i></p> <p><i>“(i) to fulfill public interest requirements; and</i></p> <p><i>“(ii) to support the objectives of the Federal Government, owners, and participants.</i></p> <p><b>“(C) CONFLICTS OF INTEREST-</b> <i>Each security-based swap data repository shall--</i></p> <p><i>“(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and</i></p> <p><i>“(ii) establish a process for resolving any conflicts of interest described in clause (i).</i></p> <p><b>“(8) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP DATA REPOSITORIES-</b> <i>Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act as a swap data repository.</i></p> <p><b>“(9) RULES-</b> <i>The Commission shall adopt rules governing persons that are registered under this subsection.’.</i></p>	
<p><b>SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.</b></p>	<p><b>SEC. 764. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.</b></p>	

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<p>The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:</p> <p><b>SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.</b></p> <p>(a) Registration-</p> <p>(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.</p> <p>(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.</p>	<p><i>The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o-7) the following:</i></p> <p><b>SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.</b></p> <p><i>(a) Registration-</i></p> <p><i>(1) SECURITY-BASED SWAP DEALERS- It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.</i></p> <p><i>(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS- It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.</i></p>	
<p>(b) Requirements-</p> <p>(1) IN GENERAL- A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.</p> <p>(2) CONTENTS- The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.</p>	<p><i>(b) Requirements-</i></p> <p><i>(1) IN GENERAL- A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.</i></p> <p><i>(2) CONTENTS-</i></p> <p><i>(A) IN GENERAL- The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.</i></p> <p><i>(B) CONTINUAL REPORTING- A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.</i></p>	
<p>(3) EXPIRATION- Each registration shall expire at such time as the Commission may by rule or regulation prescribe.</p>	<p><i>(3) EXPIRATION- Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.</i></p>	
<p>(4) RULES- Except as provided in subsections (c) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as</p>	<p><i>(4) RULES- Except as provided in subsections (c), (e), and (f), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of non-bank security-based swap dealers and non-bank major security-based</i></p>	

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<p>provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.</p>	<p><i>swap participants.</i></p>	
<p>“(5) TRANSITION- Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.</p>	<p>“(5) TRANSITION- Not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commission shall issue rules under this section to provide for the registration of security-based swap dealers and major security-based swap participants.</p>	
	<p>“(6) STATUTORY DISQUALIFICATION- Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.</p> <p>“(c) Dual Registration-</p> <p>“(1) SECURITY-BASED SWAP DEALER- Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.</p> <p>“(2) MAJOR SECURITY-BASED SWAP PARTICIPANT- Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.</p>	
<p>“(c) Rules-</p> <p>“(1) IN GENERAL- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.</p>	<p>“(d) Rulemaking-</p> <p>“(1) IN GENERAL- The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.</p>	

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<p>“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS- The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.</p>	<p>“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS- “(A) IN GENERAL- <i>The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants that are depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</i> “(B) APPLICABILITY- <i>Subparagraph (A) does not limit the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements on security-based swap dealers or major security-based swap participants that are depository institutions to protect investors.</i></p>	
<p>“(d) Capital and Margin Requirements- “(1) IN GENERAL- “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS- Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that-- “(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and “(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.</p>	<p>“(e) Capital and Margin Requirements- “(1) IN GENERAL- “(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>Each registered security-based swap dealer and major security-based swap participant that is a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the appropriate Federal banking agency shall by rule or regulation prescribe under paragraph (2)(A) to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.</i></p>	
<p>“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS- Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that-- “(i) help ensure the safety and soundness of the security-based swap dealer or major</p>	<p>“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- <i>Each registered security-based swap dealer and major security-based swap participant that is not a depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe under paragraph (2)(B) to help ensure the safety and</i></p>	

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<p>security-based swap participant; and  (ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.</p>	<p><i>soundness of the security-based swap dealer or major security-based swap participant.</i></p>	
<p>(2) RULES-  (A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.  (B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.</p>	<p>(2) RULES-  (A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>The appropriate Federal banking agencies, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants that are depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</i>  (B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- <i>The Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants that are not depository institutions, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).</i></p>	
<p>(3) AUTHORITY- Nothing in this section shall limit the authority of the Commission to set capital requirements for a broker or dealer registered in accordance with section 15 of this Act.</p>	<p>(3) CAPITAL-  (A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>The capital requirements prescribed under paragraph (2)(A) for security-based swap dealers and major security-based swap participants that are depository institutions shall contain--</i>  (i) <i>a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and</i>  (ii) <i>to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system</i></p>	

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	<p>arising from the use of security-based swaps that are not cleared, substantially higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are cleared.</p> <p>“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- The capital requirements prescribed under paragraph (2)(B) for security-based swap dealers and major security-based swap participants that are not depository institutions shall be as strict as or stricter than the capital requirements prescribed for security-based swap dealers and major security-based swap participants that are depository institutions under paragraph (2)(A).</p> <p>“(C) RULE OF CONSTRUCTION-</p> <p>“(i) IN GENERAL- Nothing in this section shall limit, or be construed to limit, the authority--</p> <p>“(I) of the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or</p> <p>“(II) of the Commodity Futures Trading Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of the Commodity Exchange Act (except for section 4f(a)(3) thereof) in accordance with section 4f(b) of the Commodity Exchange Act.</p> <p>“(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS- A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such futures commission merchant, introducing broker, broker, or dealer is subject to under</p>	

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	<p style="text-align: center;"><i>this title or the Commodity Exchange Act.</i></p> <p>“(4) MARGIN-</p> <p style="padding-left: 2em;">“(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE DEPOSITORY INSTITUTIONS- <i>The appropriate Federal banking agency for security-based swap dealers and major security-based swap participants that are depository institutions shall impose both initial and variation margin requirements in accordance with paragraph (2)(A) on all security-based swaps that are not cleared by a clearing agency.</i></p> <p style="padding-left: 2em;">“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT DEPOSITORY INSTITUTIONS- <i>The Commission shall impose both initial and variation margin requirements in accordance with paragraph (2)(B) for security-based swap dealers and major security-based swap participants that are not depository institutions on all security-based swaps that are not cleared by a clearing agency. Any such initial and variation margin requirements shall be as strict as or stricter than the margin requirements prescribed under paragraph (4)(A).</i></p> <p>“(5) MARGIN REQUIREMENTS- <i>In prescribing margin requirements under this subsection, the appropriate Federal banking agency with respect to security-based swap dealers and major security-based swap participants that are depository institutions, and the Commission with respect to security-based swap dealers and major security-based swap participants that are not depository institutions may permit the use of noncash collateral, as the agency or the Commission determines to be consistent with--</i></p> <p style="padding-left: 2em;">“(A) <i>preserving the financial integrity of markets trading security-based swaps; and</i></p> <p style="padding-left: 2em;">“(B) <i>preserving the stability of the United States financial system.</i></p> <p>“(6) COMPARABILITY OF CAPITAL AND MARGIN REQUIREMENTS-</p> <p style="padding-left: 2em;">“(A) IN GENERAL- <i>The appropriate Federal banking agencies, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation</i></p>	

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	<p><i>margin requirements.</i></p> <p><i>“(B) COMPARABILITY- The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, for--</i></p> <p style="padding-left: 40px;"><i>“(i) security-based swap dealers; and</i></p> <p style="padding-left: 40px;"><i>“(ii) major security-based swap participants.</i></p> <p><i>“(7) REQUESTED MARGIN- If any party to a security-based swap that is exempt from the margin requirements of paragraph (4)(A) or paragraph (4)(B) requests that such security-based swap be margined, then--</i></p> <p style="padding-left: 40px;"><i>“(A) the exemption shall not apply; and</i></p> <p style="padding-left: 40px;"><i>“(B) the counterparty to such security-based swap shall provide the requested margin.</i></p> <p><i>“(8) APPLICABILITY WITH RESPECT TO COUNTERPARTIES- Paragraphs (4) and (5) shall not apply to initial and variation margin for security-based swaps in which 1 of the counterparties is not--</i></p> <p style="padding-left: 40px;"><i>“(A) a security-based swap dealer;</i></p> <p style="padding-left: 40px;"><i>“(B) a major security-based swap participant; or</i></p> <p style="padding-left: 40px;"><i>“(C) a financial entity as described in section 3C(a)(10)(A)(ii), and such counterparty is eligible for and utilizing the commercial end user clearing exemption under section 3C(a)(10).</i></p>	
<p><i>“(e) Reporting and Recordkeeping-</i></p> <p style="padding-left: 20px;"><i>“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant--</i></p> <p style="padding-left: 40px;"><i>“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;</i></p> <p style="padding-left: 40px;"><i>“(B) for which--</i></p> <p style="padding-left: 60px;"><i>“(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;</i></p> <p style="padding-left: 60px;"><i>“(ii) there is no Prudential Regulator shall</i></p>	<p><i>“(f) Reporting and Recordkeeping-</i></p> <p style="padding-left: 20px;"><i>“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant--</i></p> <p style="padding-left: 40px;"><i>“(A) shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;</i></p> <p style="padding-left: 40px;"><i>“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and</i></p> <p style="padding-left: 40px;"><i>“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and</i></p>	

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<p>keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and</p> <p>“(C) shall keep such books and records open to inspection and examination by any representative of the Commission.</p>	<p><i>for such period as may be prescribed by the Commission by rule or regulation; and</i></p> <p><i>“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.</i></p>	
<p>“(2) RULES- Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.</p>	<p><i>“(2) RULES- The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.</i></p>	
<p>“(f) Daily Trading Records-</p> <p>“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.</p>	<p><i>“(g) Daily Trading Records-</i></p> <p><i>“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.</i></p>	
<p>“(2) INFORMATION REQUIREMENTS- The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.</p>	<p><i>“(2) INFORMATION REQUIREMENTS- The daily trading records shall include such information as the Commission shall require by rule or regulation.</i></p>	
<p>“(3) CUSTOMER RECORDS- Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.</p>	<p><i>“(3) CUSTOMER RECORDS- Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each customer or counterparty in a manner and form that is identifiable with each security-based swap transaction.</i></p>	
<p>“(4) AUDIT TRAIL- Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.</p>	<p><i>“(4) AUDIT TRAIL- Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.</i></p>	
<p>“(5) RULES- Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules</p>	<p><i>“(5) RULES- The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.</i></p>	

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governing daily trading records for security-based swap dealers and major security-based swap participants.		
<p><i>g</i>) Business Conduct Standards-</p> <p><i>1</i>) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing--</p> <p><i>A</i>) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);</p> <p><i>B</i>) diligent supervision of its business as a security-based swap dealer;</p> <p><i>C</i>) adherence to all applicable position limits; and</p> <p><i>D</i>) such other matters as the Commission shall determine to be necessary or appropriate.</p>	<p><i>h</i>) Business Conduct Standards-</p> <p><i>1</i>) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as may be prescribed by the Commission, by rule or regulation, that relate to--</p> <p><i>A</i>) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);</p> <p><i>B</i>) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;</p> <p><i>C</i>) adherence to all applicable position limits; and</p> <p><i>D</i>) such other matters as the Commission determines to be appropriate.</p>	
	<p><i>2</i>) SPECIAL RULE; FIDUCIARY DUTIES TO CERTAIN ENTITIES-</p> <p><i>A</i>) GOVERNMENTAL ENTITIES- A security-based swap dealer that provides advice regarding, or offers to enter into, or enters into a security-based swap with a State, State agency, city, county, municipality, or other political subdivision of a State, or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision of the State, or the Federal agency, as appropriate.</p> <p><i>B</i>) PENSION PLANS; ENDOWMENTS; RETIREMENT PLANS- A security-based swap dealer that provides advice regarding, or offers to enter into, or enters into a security-based swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate</p>	
<p><i>2</i>) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission shall--</p> <p><i>A</i>) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;</p> <p><i>B</i>) require disclosure by the security-based swap dealer or major security-based swap participant to any</p>	<p><i>3</i>) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission under this subsection shall--</p> <p><i>A</i>) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;</p> <p><i>B</i>) require disclosure by the security-based swap dealer or major security-based swap participant to any</p>	

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<p>counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:</p> <ul style="list-style-type: none"> <li>ˆ(i) information about the material risks and characteristics of the security-based swap;</li> <li>ˆ(ii) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency, and for non-cleared security-based swaps, upon request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and</li> <li>ˆ(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and</li> </ul> <p>ˆ(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.</p>	<p><i>counterparty to the transaction (other than a security-based swap dealer or a major security-based swap participant) of--</i></p> <ul style="list-style-type: none"> <li>ˆ(i) <i>information about the material risks and characteristics of the security-based swap;</i></li> <li>ˆ(ii) <i>the source and amount of any fees or other material remuneration that the security-based swap dealer or major security-based swap participant would directly or indirectly expect to receive in connection with the security-based swap;</i></li> <li>ˆ(iii) <i>any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and</i></li> <li>ˆ(iv) <i>(I) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency; and (II) for uncleared security-based swaps, the daily mark of the security-based swap dealer or the major security-based swap participant;</i></li> </ul> <p>ˆ(C) <i>establish a standard of conduct for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;</i></p> <p>ˆ(D) <i>establish a standard of conduct for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of the Commodity Exchange Act, to have a reasonable basis to believe that the counterparty has an independent representative that--</i></p> <ul style="list-style-type: none"> <li>ˆ(i) <i>has sufficient knowledge to evaluate the transaction and risks;</i></li> <li>ˆ(ii) <i>is not subject to a statutory disqualification;</i></li> <li>ˆ(iii) <i>is independent of the security-based swap dealer or major security-based swap participant;</i></li> <li>ˆ(iv) <i>undertakes a duty to act in the best</i></li> </ul>	

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	<p><i>interests of the counterparty it represents;</i>  <i>^(v) makes appropriate disclosures; and</i>  <i>^(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and</i>  <i>^(E) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.</i></p>	
<p>^(3) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.</p>	<p>^(4) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.</p>	
<p>^(h) Documentation Standards-  ^(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.</p>	<p>^(i) Documentation and Back Office Standards-  ^(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.</p>	
<p>^(2) RULES- Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.</p>	<p>^(2) RULES- The Commission shall adopt rules governing documentation and back office standards for security-based swap dealers and major security-based swap participants.</p>	
<p>^(i) Dealer Responsibilities- Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:  ^(1) MONITORING OF TRADING- The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.</p>	<p>^(j) Duties- Each registered security-based swap dealer and major security-based swap participant shall, at all times, comply with the following requirements:  ^(1) MONITORING OF TRADING- The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.</p>	
	<p>^(2) RISK MANAGEMENT PROCEDURES- The security-based swap dealer or major security-based swap participant shall</p>	

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	<p><i>establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.</i></p>	
<p>“(2) DISCLOSURE OF GENERAL INFORMATION- The security-based swap dealer or major security-based swap participant shall disclose to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning--</p> <ul style="list-style-type: none"> <li>“(A) terms and conditions of its security-based swaps;</li> <li>“(B) security-based swap trading operations, mechanisms, and practices;</li> <li>“(C) financial integrity protections relating to security-based swaps; and</li> <li>“(D) other information relevant to its trading in security-based swaps.</li> </ul>	<p>“(3) DISCLOSURE OF GENERAL INFORMATION- The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning--</p> <ul style="list-style-type: none"> <li>“(A) terms and conditions of its security-based swaps;</li> <li>“(B) security-based swap trading operations, mechanisms, and practices;</li> <li>“(C) financial integrity protections relating to security-based swaps; and</li> <li>“(D) other information relevant to its trading in security-based swaps.</li> </ul>	
<p>“(3) ABILITY TO OBTAIN INFORMATION- The security-based swap dealer or major swap security-based participant shall--</p> <ul style="list-style-type: none"> <li>“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and</li> <li>“(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.</li> </ul>	<p>“(4) ABILITY TO OBTAIN INFORMATION- The security-based swap dealer or major security-based swap participant shall--</p> <ul style="list-style-type: none"> <li>“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and</li> <li>“(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.</li> </ul>	
<p>“(4) CONFLICTS OF INTEREST- The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that--</p> <ul style="list-style-type: none"> <li>“(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and</li> <li>“(B) address such other issues as the Commission determines appropriate.</li> </ul>	<p>“(5) CONFLICTS OF INTEREST- The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that--</p> <ul style="list-style-type: none"> <li>“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or</li> </ul>	

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	<p><i>supervision and contravene the core principles of open access and the business conduct standards described in this title; and</i></p> <p><i>“(B) address such other issues as the Commission determines to be appropriate.</i></p>	
<p>“(j) Statutory Disqualification- Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.</p>		
	<p><i>“(6) ANTITRUST CONSIDERATIONS- Unless necessary or appropriate to achieve the purposes of this title, the security-based swap dealer or major security-based swap participant shall not--</i></p> <p><i>“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or</i></p> <p><i>“(B) impose any material anticompetitive burden on trading or clearing.</i></p>	
	<p><i>“(k) Designation of Chief Compliance Officer-</i></p> <p><i>“(1) IN GENERAL- Each security-based swap dealer and major security-based swap participant shall designate an individual to serve as a chief compliance officer.</i></p> <p><i>“(2) DUTIES- The chief compliance officer shall--</i></p> <p><i>“(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;</i></p> <p><i>“(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;</i></p> <p><i>“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;</i></p>	

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	<p><i>“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;</i></p> <p><i>“(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;</i></p> <p><i>“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any--</i></p> <ul style="list-style-type: none"> <li><i>“(i) compliance office review;</i></li> <li><i>“(ii) look-back;</i></li> <li><i>“(iii) internal or external audit finding;</i></li> <li><i>“(iv) self-reported error; or</i></li> <li><i>“(v) validated complaint; and</i></li> </ul> <p><i>“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.</i></p> <p><b>“(3) ANNUAL REPORTS-</b></p> <p><i>“(A) IN GENERAL- In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of--</i></p> <ul style="list-style-type: none"> <li><i>“(i) the compliance of the security-based swap dealer or major swap participant with respect to this title (including regulations); and</i></li> <li><i>“(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).</i></li> </ul> <p><i>“(B) REQUIREMENTS- A compliance report under subparagraph (A) shall--</i></p> <ul style="list-style-type: none"> <li><i>“(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and</i></li> <li><i>“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.</i></li> </ul>	
“(k) Enforcement and Administrative Proceeding Authority-	“(l) Enforcement and Administrative Proceeding Authority-	

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<p>^(1) PRIMARY ENFORCEMENT AUTHORITY-</p> <p>^(A) SEC- Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.</p>	<p>^(1) PRIMARY ENFORCEMENT AUTHORITY-</p> <p>^(A) SECURITIES AND EXCHANGE COMMISSION- Except as provided in subparagraph (B), the Commission shall have primary authority to enforce subtitle B, and the amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.</p>	
<p>^(B) PRUDENTIAL REGULATORS- The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.</p>	<p>^(B) APPROPRIATE FEDERAL BANKING AGENCIES- The appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions, as that term is defined under section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), shall have exclusive authority to enforce the provisions of subsection (e) and other prudential requirements of this title, with respect to depository institutions that are security-based swap dealers or major security-based swap participants.</p>	
<p>^(C) REFERRAL-</p> <p>^(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS- If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.</p> <p>^(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS- If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a</p>	<p>^(C) REFERRAL-</p> <p>^(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS- If the appropriate Federal banking agency for security-based swap dealers or major security-based swap participants that are depository institutions has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of this section or rules adopted by the Commission thereunder, the agency may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.</p> <p>^(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS- If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator</p>	

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<p>violation of the prudential requirements of section 15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.</p>	<p><i>may have engaged in conduct that constitute a violation of the prudential requirements of subsection (e) or rules adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.</i></p>	
<p>“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING- The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated--</p> <p>“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);</p> <p>“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;</p> <p>“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);</p> <p>“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or</p> <p>“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).</p>	<p><i>“(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING- The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated--</i></p> <p><i>“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);</i></p> <p><i>“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;</i></p> <p><i>“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);</i></p> <p><i>“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or</i></p> <p><i>“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).</i></p>	

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<p>“(3) ASSOCIATED PERSONS- With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--</p> <p>“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);</p> <p>“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;</p> <p>“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);</p> <p>“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or</p> <p>“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).</p>	<p>“(3) ASSOCIATED PERSONS- With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person--</p> <p>-</p> <p>“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);</p> <p>“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;</p> <p>“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);</p> <p>“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or</p> <p>“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).</p>	
<p>“(4) UNLAWFUL CONDUCT- It shall be unlawful--</p> <p>“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or</p> <p>“(B) for any security-based swap dealer or major security-based swap participant to permit such a</p>	<p>“(4) UNLAWFUL CONDUCT- It shall be unlawful--</p> <p>“(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or</p> <p>“(B) for any security-based swap dealer or major security-based swap participant to permit such a</p>	

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<p>person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.'.</p>	<p><i>person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.'.</i></p>	
<p><b>SEC. 3205. REPORTING AND RECORDKEEPING.</b></p> <p>(a) The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following section:</p> <p><b>SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.</b></p> <p>(a) In General- Any person who enters into a security-based swap and--</p> <p>(1) did not clear the security-based swap in accordance with section 3A; and</p> <p>(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n), shall meet the requirements in subsection (b).</p> <p>(b) Reports- Any person described in subsection (a) shall--</p> <p>(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and</p> <p>(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.</p>	<p><b>SEC. 766. REPORTING AND RECORDKEEPING.</b></p> <p>(a) <i>In General- The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following:</i></p> <p><b>SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.</b></p> <p>(a) <i>Required Reporting of Security-based Swaps Not Accepted by Any Clearing Agency or Derivatives Clearing Organization-</i></p> <p>(1) <i>IN GENERAL- Each security-based swap that is not accepted for clearing by any clearing agency or derivatives clearing organization shall be reported to--</i></p> <p>(A) <i>a security-based swap data repository described in section 10B(n); or</i></p> <p>(B) <i>in the case in which there is no security-based swap data repository that would accept the security-based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.</i></p> <p>(2) <b>TRANSITION RULE FOR PREENACTMENT SECURITY-BASED SWAPS-</b></p> <p>(A) <b>SECURITY-BASED SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010-</b> <i>Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than--</i></p> <p>(i) <i>30 days after issuance of the interim final</i></p>	

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	<p>rule; or</p> <p>    (ii) such other period as the Commission determines to be appropriate.</p> <p>    (B) COMMISSION RULEMAKING- The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in subparagraph (A).</p> <p>    (C) EFFECTIVE DATE- The reporting provisions described in this section shall be effective upon the date of the enactment of this section.</p> <p>(3) REPORTING OBLIGATIONS-</p> <p>    (A) SECURITY-BASED SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT- With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).</p> <p>    (B) SECURITY-BASED SWAPS IN WHICH 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER AND THE OTHER A MAJOR SECURITY-BASED SWAP PARTICIPANT- With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-based swap as required under paragraphs (1) and (2).</p> <p>    (C) OTHER SECURITY-BASED SWAPS- With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).</p> <p>(b) Duties of Certain Individuals- Any individual or entity that enters into a security-based swap shall meet each requirement described in subsection (c) if the individual or entity did not--</p> <p>    (1) clear the security-based swap in accordance with section 3C(a)(1); or</p> <p>    (2) have the data regarding the security-based swap accepted</p>	

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	<p>by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this title.</p> <p>(c) Requirements- An individual or entity described in subsection (b) shall--</p> <p>(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and</p> <p>(2) maintain books and records pertaining to the security-based swaps held by the individual or entity in such form, in such manner, and for such period as the Commission may require, which shall be open to inspection by--</p> <p>(A) any representative of the Commission;</p> <p>(B) an appropriate prudential regulator;</p> <p>(C) the Commodity Futures Trading Commission;</p> <p>(D) the Financial Stability Oversight Council; and</p> <p>(E) the Department of Justice.</p>	
<p>(c) Identical Data- In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).'</p>	<p>(d) Identical Data- In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by security-based swap data repositories under this title.'</p>	
<p>(b) Beneficial Ownership Reporting-</p> <p>(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting 'or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and' after 'Alaska Native Claims Settlement Act,'; and</p> <p>(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting 'or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule' after 'subsection (d)(1) of this section'.</p>	<p>(b) Beneficial Ownership Reporting- Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended--</p> <p>(1) in subsection (d)(1), by inserting 'or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and' after 'Alaska Native Claims Settlement Act,'; and</p> <p>(2) in subsection (g)(1), by inserting 'or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule' after 'subsection (d)(1) of this section'.</p>	
<p>(c) Reports by Institutional Investment Managers- Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting 'or otherwise becomes or is deemed to become a beneficial</p>	<p>(c) Reports by Institutional Investment Managers- Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting 'or otherwise becomes or is deemed to become a beneficial</p>	

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owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule,' after `subsection (d)(1) of this section'.	<i>owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule,' after `subsection (d)(1) of this section'.</i>	
(d) Administrative Proceeding Authority- Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended-- (1) in subparagraph (C), by adding `security-based swap dealer, major security-based swap participant,' after `government securities dealer,'; and (2) in subparagraph (F), by adding `, or security-based swap dealer, or a major security-based swap participant' after `or dealer'.	<i>(d) Administrative Proceeding Authority- Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended-- (1) in subparagraph (C), by inserting `security-based swap dealer, major security-based swap participant,' after `government securities dealer,'; and (2) in subparagraph (F), by striking `broker or dealer' and inserting `broker, dealer, security-based swap dealer, or a major security-based swap participant'.</i>	
(e) Derivatives Beneficial Ownership- Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following: ` (o) Beneficial Ownership- For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.'.	<i>(e) Security-based Swap Beneficial Ownership- Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following: ` (o) Beneficial Ownership- For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.'.</i>	
<b>SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.</b>  Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows: ` (a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this	<b>SEC. 767. STATE GAMING AND BUCKET SHOP LAWS.</b>  <i>Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows: ` (a) Limitation on Judgments- ` (1) IN GENERAL- No person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the</i>	

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<p>title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of `bucket shops' or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.'</p>	<p><i>securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations under this title.</i></p> <p><i>`(2) RULE OF CONSTRUCTION- Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.</i></p> <p><i>`(3) STATE BUCKET SHOP LAWS- No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of `bucket shops' or other similar or related activities, shall invalidate--</i></p> <p><i>    `A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;</i></p> <p><i>    `B) any security-based swap between eligible contract participants; or</i></p> <p><i>    `C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).</i></p> <p><i>`(4) OTHER STATE PROVISIONS- No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.'</i></p>	
<p><b>SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.</b></p> <p>(a) Definitions- Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended--</p> <p>    (1) in paragraph (1), by inserting `security-based swap,' after `security future,';</p>	<p><b>SEC. 768. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.</b></p> <p>(a) Definitions- Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended--</p> <p>    (1) in paragraph (1), by inserting `security-based swap,' after `security future,';</p>	
<p>(2) in paragraph (3) by adding at the end the following: `Any</p>	<p>(2) in paragraph (3), by adding at the end the following: `Any</p>	

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offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.'; and	<i>offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.'; and</i>	
(3) by adding at the end the following: `(17) The terms `swap' and `security-based swap' have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934. `(18) The terms `purchase' or `sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'.	<i>(3) by adding at the end the following:          `(17) The terms `swap' and `security-based swap' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).          `(18) The terms `purchase' or `sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'.</i>	
(b) Exemption From Registration- Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following: `(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.'.		
(c) Registration of Security-based Swaps- Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following: `(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).'.	<i>(b) Registration of Security-based Swaps- Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:          `(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18)).'.</i>	
<b>SEC. 3208. OTHER AUTHORITY.</b>	<b>SEC. 771. OTHER AUTHORITY.</b>	

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<p>Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.</p>	<p><i>Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.</i></p>	
<p><b>SEC. 3209. JURISDICTION.</b></p> <p>(a) Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:  `c) Derivatives- The Commission shall not grant exemptions from the security-based swap provisions of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.'.</p>	<p><b>SEC. 772. JURISDICTION.</b></p> <p><i>(a) In General- Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following:  `c) Derivatives- The Commission shall not grant exemptions from the security-based swap provisions of the Wall Street Transparency and Accountability Act of 2010 or the amendments made by that Act, except as expressly authorized under the provisions of that Act.'.</i></p>	
<p>(b) Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:  `c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.'.</p>	<p><i>(b) Rule of Construction- Section 30 of the Securities Exchange Act of 1934 (15 U.S.C. 78dd) is amended by adding at the end the following:  `c) Rule of Construction- No provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this title, as in effect prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.'.</i></p>	
<p><b>SEC. 3210. EFFECTIVE DATE.</b></p> <p>(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.  (b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.</p>	<p><b>SEC. 773. EFFECTIVE DATE.</b></p> <p><i>Unless otherwise specifically provided in this subtitle, this subtitle, the provisions of this subtitle, and the amendments made by this subtitle shall become effective 180 days after the date of enactment of this Act.</i></p>	

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<p align="center"><b>Subtitle C--Improved Financial and Commodity Markets Oversight and Accountability</b></p>		
<p><b>SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.</b></p> <p>(a) Inclusion in Certain Definitions- Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended--</p> <p>(1) in paragraph (1), by striking `or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;' and inserting `the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;'; and</p> <p>(2) in paragraph (2), by striking `or the Commissions established under section 15301 of title 40, United States Code,' and inserting `the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency,'.</p> <p>(b) Exclusion From Definition of Designated Federal Entity- Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended--</p> <p>(1) by striking `the Board of Governors of the Federal Reserve System,';</p> <p>(2) by striking `the Commodity Futures Trading Commission,';</p> <p>(3) by striking `the National Credit Union Administration,'; and</p> <p>(4) by striking `the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,'.</p>	<p><b>SEC. 989B. DESIGNATED FEDERAL ENTITY INSPECTORS GENERAL INDEPENDENCE.</b></p> <p><i>Section 8G of the Inspector General Act of 1978 (5 U.S.C. App.) is amended--</i></p> <p><i>(1) in subsection (a)(4)--</i></p> <p><i>(A) in the matter preceding subparagraph (A), by inserting `the board or commission of the designated Federal entity, or in the event the designated Federal entity does not have a board or commission,' after `means';</i></p> <p><i>(B) in subparagraph (A), by striking `and' after the semicolon; and</i></p> <p><i>(C) by adding after subparagraph (B) the following:</i></p> <p><i>`(C) with respect to the Federal Labor Relations Authority, such term means the members of the Authority (described under section 7104 of title 5, United States Code);</i></p> <p><i>`(D) with respect to the National Archives and Records Administration, such term means the Archivist of the United States;</i></p> <p><i>`(E) with respect to the National Credit Union Administration, such term means the National Credit Union Administration Board (described under section 102 of the Federal Credit Union Act (12 U.S.C. 1752a);</i></p> <p><i>`(F) with respect to the National Endowment of the Arts, such term means the National Council on the Arts;</i></p> <p><i>`(G) with respect to the National Endowment for the Humanities, such term means the National Council on the Humanities; and</i></p> <p><i>`(H) with respect to the Peace Corps, such term means the Director of the Peace Corps;'; and</i></p> <p><i>(2) in subsection (h), by inserting `if the designated Federal entity is not a board or commission, include' after `designated Federal entities and'.</i></p>	

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<p><b>SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO PERSONNEL.</b></p> <p>(a) In General- The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8L the following:</p> <p><b>SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ESTABLISHMENTS.</b></p> <p>(a) Definition- For purposes of this section, the term 'covered establishment' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.</p> <p>(b) Provisions Relating to All Covered Establishments-</p> <p>(1) PROVISIONS RELATING TO INSPECTORS GENERAL- In the case of the Inspector General of a covered establishment, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110-409) shall apply in the same manner as if such covered establishment were a designated Federal entity under section 8G. An Inspector General who is subject to the preceding sentence shall not be subject to section 3(e).</p> <p>(2) PROVISIONS RELATING TO OTHER PERSONNEL- Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.</p> <p>(c) Provision Relating to the Board of Governors of the Federal Reserve System- The provisions of subsection (a) of section 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.'</p>		

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(b) Conforming Amendment- Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.		
<p><b>SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.</b></p> <p>The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each--</p> <ul style="list-style-type: none"> <li>(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or</li> <li>(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).</li> </ul>		
<p><b>SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.</b></p> <p>(a) Effective Date- This subtitle and the amendments made by this subtitle shall take effect 30 days after the date of the enactment of this subtitle.</p> <p>(b) Transition Rule- An individual serving as Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission on the effective date of this subtitle pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)--</p> <ul style="list-style-type: none"> <li>(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and</li> <li>(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to</li> </ul>		

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<p>the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.</p>		
<p><b>SEC. 3305. AUTHORITY OF THE COMMODITY FUTURES TRADING COMMISSION TO DEFINE `COMMERCIAL RISK', `OPERATING RISK', AND `BALANCE SHEET RISK'.</b></p> <p>(a) In General- Section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the preceding provisions of this Act, is amended by adding at the end the following:  ` (51) COMMERCIAL RISK; OPERATING RISK; BALANCE SHEET RISK- The terms `commercial risk', `operating risk', and `balance sheet risk' shall have such meanings as the Commission may prescribe.'</p> <p>(b) Effective Date- The amendment made by subsection (a) shall take effect as if included in subtitle A.</p>		
<p><b>SEC. 3306. CONFLICTS OF INTEREST IN CLEARING ORGANIZATIONS.</b></p> <p>(a) Commodity Exchange Act-</p> <p>(1) DEFINITION OF RESTRICTED OWNER- Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:  ` (51) RESTRICTED OWNER- The term `restricted owner' means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.'</p>		
<p>(2) CONFLICTS OF INTEREST-</p> <p>(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding</p>		

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<p>provisions of this Act) is amended by adding at the end of such subparagraph the following: `The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.'</p>		
<p>(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended--</p> <ul style="list-style-type: none"> <li>(i) by striking `and' at the end of subparagraph (C); and</li> <li>(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:</li> </ul> <p>`(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and'.</p>		

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<p>(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:</p> <p>`(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.</p> <p>`(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.'</p>		
<p>(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:</p> <p>`(15) CONFLICTS OF INTEREST-</p> <p>`(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.</p> <p>`(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade,</p>		

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<p>to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.</p> <p>`(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.'</p>		
<p>(b) Securities Exchange Act of 1934-</p> <p>(1) DEFINITION OF RESTRICTED OWNER- Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:</p> <p>`(78) RESTRICTED OWNER- The term `restricted owner' has the same meaning as in section 1a(51) of the Commodity Exchange Act.'</p>		
<p>(2) CONFLICTS OF INTEREST-</p> <p>(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:</p> <p>`The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.</p>		

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<p>This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.'</p>		
<p>(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended--</p> <p style="padding-left: 40px;">(i) in subparagraph (C), strike `and'; and</p> <p style="padding-left: 40px;">(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):</p> <p>`(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and'.</p>		
<p>(C) Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:</p> <p>`(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.</p> <p>`(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.</p> <p>`(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an</p>		

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<p>established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.'</p>		
<p>(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:  (J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.  (K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.'</p>		
<p><b>SEC. 3307. DEFINITIONS OF MAJOR SWAP PARTICIPANT AND MAJOR SECURITY-BASED SWAP PARTICIPANT.</b></p> <p>(a) Major Swap Participant- Section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a), as added by the preceding provisions of this Act, is amended to read as follows:  (39) MAJOR SWAP PARTICIPANT-  (A) IN GENERAL- The term `major swap participant'</p>		<p>See Section 3101 of HR 4173 for an additional, differing definition of Major Swap Participant.</p>

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<p>means any person who is not a swap dealer, and--</p> <ul style="list-style-type: none"> <li>^(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or</li> <li>^(ii) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.</li> </ul> <p>^(B) DEFINITION OF SUBSTANTIAL NET POSITION- The Commission shall define by rule or regulation the term `substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.</p> <p>^(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.'</p>		
<p>(b) Major Security-based Swap Participant- Section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended to read as follows:</p> <p>^(67) MAJOR SECURITY-BASED SWAP PARTICIPANT-</p> <p>^(A) IN GENERAL- The term `major security-based swap participant' means any person who is not a security-based swap dealer, and--</p> <ul style="list-style-type: none"> <li>^(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or</li> <li>^(ii) whose outstanding security-based swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.</li> </ul> <p>^(B) DEFINITION OF SUBSTANTIAL NET POSITION- The Commission shall define by rule or</p>		<p>See Section 3201 of HR 4173 for additional, differing definition of Major Security-Based Swap Participant.</p>

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<p>regulation the term `substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps.</p> <p>`(C) A person may be designated a major security-based swap participant for 1 or more individual types of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.'</p>		
<p>(c) Effective Dates-</p> <p>(1) MAJOR SWAP PARTICIPANT- The amendment made by subsection (a)(1) shall take effect as if included in subtitle A.</p> <p>(2) MAJOR SECURITY-BASED SWAP PARTICIPANT- The amendment made by subsection (a)(2) shall take effect as if included in subtitle B.</p>		
	<p><b>SEC. 717. NEW PRODUCT APPROVAL--CFTC--SEC PROCESS.</b></p> <p><i>(a) Amendments to the Commodity Exchange Act- Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) is amended--</i></p> <p><i>(1) in clause (i) by striking `This' and inserting `(I) Except as provided in subclause (II), this'; and</i></p> <p><i>(2) by adding at the end of clause (i) the following:</i></p> <p><i>(II) This Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements, and transactions involving, and may permit the listing for trading pursuant to section 5c(c) of, a put, call, or other option on 1 or more securities (as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934 on the date of enactment of the Futures Trading Act of 1982), including any group or index of such securities, or any</i></p>	

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	<p><i>interest therein or based on the value thereof, that is exempted by the Securities and Exchange Commission pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 with the condition that the Commission exercise concurrent jurisdiction over such put, call, or other option; provided, however, that nothing in this paragraph shall be construed to affect the jurisdiction and authority of the Securities and Exchange Commission over such put, call, or other option.'</i></p> <p><i>(b) Amendment to the Securities Exchange Act of 1934- The Securities Exchange Act of 1934 is amended by adding the following section after section 3A (15 U.S.C. 78c-1):</i></p> <p><b>SEC. 3B. SECURITIES-RELATED DERIVATIVES.</b></p> <p><i>“(a) Any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof) shall be deemed a security for purposes of the securities laws.</i></p> <p><i>“(b) With respect to any agreement, contract, or transaction (or class thereof) that is exempted by the Commodity Futures Trading Commission pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with the condition that the Commission exercise concurrent jurisdiction over such agreement, contract, or transaction (or class thereof), references in the securities laws to the ‘purchase’ or ‘sale’ of a security shall be deemed to include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under such agreement, contract, or transaction, as the context may require.’</i></p> <p><i>(c) Amendment to Securities Exchange Act of 1934- Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:</i></p> <p><i>“(10) Notwithstanding the provisions of paragraph (2), the time period within which the Commission is required by order to approve a proposed rule change or institute proceedings to</i></p>	

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	<p><i>determine whether the proposed rule change should be disapproved is stayed pending a determination by the Commission upon the request of the Commodity Futures Trading Commission or its Chairman that the Commission issue a determination as to whether a product that is the subject of such proposed rule change is a security pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.'</i></p> <p><i>(d) Amendment to Commodity Exchange Act- Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(1)) is amended--</i></p> <p><i>(1) by striking `Subject to paragraph (2)' and inserting the following:</i></p> <p><i>    (A) ELECTION- Subject to paragraph (2)'; and</i></p> <p><i>(2) by adding at the end the following:</i></p> <p><i>    (B) CERTIFICATION- The certification of a product pursuant to this paragraph shall be stayed pending a determination by the Commission upon the request of the Securities and Exchange Commission or its Chairman that the Commission issue a determination as to whether the product that is the subject of such certification is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity pursuant to section 718 of the Wall Street Transparency and Accountability Act of 2010.'</i></p>	
	<p><b>SEC. 718. DETERMINING STATUS OF NOVEL DERIVATIVE PRODUCTS.</b></p> <p><i>(a) Process for Determining the Status of a Novel Derivative Product-</i></p> <p><i>(1) NOTICE-</i></p> <p><i>(A) IN GENERAL- Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with both the Securities and Exchange Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.</i></p> <p><i>(B) NOTIFICATION- If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or</i></p>	

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	<p><i>trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission.</i></p> <p>(2) <b>REQUEST FOR DETERMINATION-</b></p> <p>(A) <b>IN GENERAL-</b> <i>No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).</i></p> <p>(B) <b>REQUEST-</b> <i>No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)).</i></p> <p>(C) <b>REQUIREMENT RELATING TO REQUEST-</b> <i>A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.</i></p> <p>(D) <b>EFFECT-</b> <i>Nothing in this paragraph shall be construed to prevent--</i></p> <p style="padding-left: 40px;"><i>(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 36(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78mm(a)(1)) with respect to a product that is the subject of a filing under paragraph (1); or</i></p>	

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	<p>(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) with respect to a product that is the subject of a filing under paragraph (1).</p> <p>Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; provided further, That an order granting or denying an exemption described in this subparagraph and issued under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).</p> <p>(E) WITHDRAWAL OF REQUEST- A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.</p> <p>(3) DETERMINATION- Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request-</p> <p>-</p> <p>(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of paragraph (2), as applicable, and the reasons therefore; or</p> <p>(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y).</p> <p>(b) Judicial Resolution-</p>	

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	<p>(1) <i>IN GENERAL</i>- The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission, with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it believes affects its statutory jurisdiction, including an order or orders issued under subsection (a)(3)(A), by filing in such court, within 60 days after the date of entry of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.</p> <p>(2) <i>TRANSMITTAL OF PETITION AND RECORD</i>- A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.</p> <p>(3) <i>STANDARD OF REVIEW</i>- The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.</p> <p>(4) <i>JUDICIAL STAY</i>- The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).</p>	
	<p><b>SEC. 726. RULEMAKING ON CONFLICT OF INTEREST.</b></p> <p>(a) <i>In General</i>- Not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Commodity Futures Trading Commission shall determine whether to adopt rules to establish limits on the control of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board of Governors of the Federal Reserve System, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap</p>	

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	<p>participant.</p> <p><i>(b) Purposes- The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.</i></p>	
	<p><b>SEC. 744. RESTITUTION REMEDIES.</b></p> <p><i>Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a-1(d)) is amended by adding at the end the following:</i></p> <p><i>“(3) EQUITABLE REMEDIES- In any action brought under this section, the Commission may seek, and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including--</i></p> <p><i>“(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and</i></p> <p><i>“(B) disgorgement of gains received in connection with such violation.’.</i></p>	
	<p><b>SEC. 746. INSIDER TRADING.</b></p> <p><i>Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:</i></p> <p><i>“(3) CONTRACT OF SALE- It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the</i></p>	

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	<p>information in his personal capacity and for personal gain to enter into, or offer to enter into--</p> <p>    (A) a contract of sale of a commodity for future delivery (or option on such a contract);</p> <p>    (B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or</p> <p>    (C) a swap.</p> <p>(4) NONPUBLIC INFORMATION-</p> <p>    (A) IMPARTING OF NONPUBLIC INFORMATION- It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into--</p> <p>        (i) a contract of sale of a commodity for future delivery (or option on such a contract);</p> <p>        (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or</p> <p>        (iii) a swap.</p> <p>    (B) KNOWING USE- It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into--</p> <p>        (i) a contract of sale of a commodity for</p>	

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	<p>future delivery (or option on such a contract);  (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or  (iii) a swap.</p> <p>(C) THEFT OF NONPUBLIC INFORMATION- It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into--</p> <p>(i) a contract of sale of a commodity for future delivery (or option on such a contract);  (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or  (iii) a swap.</p> <p>Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale,</p>	

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	<p style="text-align: center;"><i>option, or swap described in clauses (i), (ii), or (iii).'</i></p>	
	<p><b>SEC. 748. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.</b></p> <p style="text-align: center;"><i>The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:</i></p> <p><b>SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.</b></p> <p><i>(a) Definitions- In this section:</i></p> <p><i>(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION- The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under this Act that results in monetary sanctions exceeding \$1,000,000.</i></p> <p><i>(2) FUND- The term 'Fund' means the Commodity Futures Trading Commission Customer Protection Fund established under subsection (g).</i></p> <p><i>(3) MONETARY SANCTIONS- The term 'monetary sanctions', when used with respect to any judicial or administrative action means--</i></p> <p style="padding-left: 40px;"><i>(A) any monies, including penalties, disgorgement, restitution, and interest ordered to be paid; and</i></p> <p style="padding-left: 40px;"><i>(B) any monies deposited into a disgorgement fund or other fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.</i></p> <p><i>(4) ORIGINAL INFORMATION- The term 'original information' means information that--</i></p> <p style="padding-left: 40px;"><i>(A) is derived from the independent knowledge or analysis of a whistleblower;</i></p> <p style="padding-left: 40px;"><i>(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and</i></p> <p style="padding-left: 40px;"><i>(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.</i></p>	

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	<p><i>“(5) RELATED ACTION- The term ‘related action’, when used with respect to any judicial or administrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subclauses (i) through (vi) of subsection (g)(2)(B) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.</i></p> <p><i>“(6) SUCCESSFUL RESOLUTION- The term ‘successful resolution’, when used with respect to any judicial or administrative action brought by the Commission under this Act, includes any settlement of such action.</i></p> <p><i>“(7) WHISTLEBLOWER- The term ‘whistleblower’ means any individual, or 2 or more individuals acting jointly, who provides information relating to a violation of this Act to the Commission, in a manner established by rule or regulation, by the Commission.</i></p> <p><i>“(b) Awards-</i></p> <p><i>“(1) IN GENERAL- In any covered judicial or administrative action, or related action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to--</i></p> <p><i>“(A) not less than 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and</i></p> <p><i>“(B) not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.</i></p> <p><i>“(2) PAYMENT OF AWARDS- Any amount paid under paragraph (1) shall be paid from the Fund.</i></p> <p><i>“(c) Determination of Amount of Award; Denial of Award-</i></p> <p><i>“(1) DETERMINATION OF AMOUNT OF AWARD-</i></p> <p><i>“(A) DISCRETION- The determination of the amount of an award made under subsection (b) shall be in the discretion of the Commission.</i></p> <p><i>“(B) CRITERIA- In determining the amount of an award made under subsection (b), the Commission shall take into account--</i></p> <p><i>“(i) the significance of the information</i></p>	

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	<p>provided by the whistleblower to the success of the covered judicial or administrative action;</p> <p>“(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;</p> <p>“(iii) the programmatic interest of the Commission in deterring violations of the Act (including regulations under the Act) by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws; and</p> <p>“(iv) such additional relevant factors as the Commission may establish by rule or regulation.</p> <p>“(2) DENIAL OF AWARD- No award under subsection (b) shall be made--</p> <p>“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of--</p> <p>“(i) a appropriate regulatory agency;</p> <p>“(ii) the Department of Justice;</p> <p>“(iii) a registered entity;</p> <p>“(iv) a registered futures association; or</p> <p>“(v) a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or</p> <p>“(vi) a law enforcement organization;</p> <p>“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;</p> <p>“(C) to any whistleblower who submits information to the Commission that is based on the facts underlying the covered action submitted previously by another whistleblower;</p> <p>“(D) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.</p> <p>“(d) Representation-</p> <p>“(1) PERMITTED REPRESENTATION- Any whistleblower who</p>	

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	<p><i>makes a claim for an award under subsection (b) may be represented by counsel.</i></p> <p><i>“(2) REQUIRED REPRESENTATION-</i></p> <p style="padding-left: 40px;"><i>“(A) IN GENERAL- Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower submits the information upon which the claim is based.</i></p> <p style="padding-left: 40px;"><i>“(B) DISCLOSURE OF IDENTITY- Prior to the payment of an award, a whistleblower shall disclose the identity of the whistleblower and provide such other information as the Commission may require, directly or through counsel for the whistleblower.</i></p> <p><i>“(e) No Contract Necessary- No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission, by rule or regulation.</i></p> <p><i>“(f) Appeals-</i></p> <p style="padding-left: 40px;"><i>“(1) IN GENERAL- Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission.</i></p> <p style="padding-left: 40px;"><i>“(2) APPEALS- Any determination described in paragraph (1) may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Commission.</i></p> <p style="padding-left: 40px;"><i>“(3) REVIEW- The court shall review the determination made by the Commission in accordance with section 7064 of title 5, United States Code.</i></p> <p><i>“(g) Commodity Futures Trading Commission Customer Protection Fund-</i></p> <p style="padding-left: 40px;"><i>“(1) ESTABLISHMENT- There is established in the Treasury of the United States a revolving fund to be known as the ‘Commodity Futures Trading Commission Customer Protection Fund’.</i></p> <p style="padding-left: 40px;"><i>“(2) USE OF FUND- The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for--</i></p> <p style="padding-left: 80px;"><i>“(A) the payment of awards to whistleblowers as provided in subsection (a); and</i></p> <p style="padding-left: 80px;"><i>“(B) the funding of customer education initiatives designed to help customers protect themselves against fraud or other violations of this Act, or the rules and regulations thereunder.</i></p> <p><i>“(3) DEPOSITS AND CREDITS- There shall be deposited into</i></p>	

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	<p><i>or credited to the Fund--</i></p> <p><i>ˆ(A) any monetary judgment collected by the Commission in any judicial or administrative action brought by the Commission under this Act, that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds \$100,000,000; and</i></p> <p><i>ˆ(B) all income from investments made under paragraph (4).</i></p> <p><i>ˆ(4) INVESTMENTS-</i></p> <p><i>ˆ(A) AMOUNTS IN FUND MAY BE INVESTED- The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission's judgment, required to meet the current needs of the Fund.</i></p> <p><i>ˆ(B) ELIGIBLE INVESTMENTS- Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.</i></p> <p><i>ˆ(C) INTEREST AND PROCEEDS CREDITED- The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.</i></p> <p><i>ˆ(5) REPORTS TO CONGRESS- Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on--</i></p> <p><i>ˆ(A) the Commission's whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;</i></p> <p><i>ˆ(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;</i></p> <p><i>ˆ(C) the balance of the Fund at the beginning of the preceding fiscal year;</i></p> <p><i>ˆ(D) the amounts deposited into or credited to the Fund</i></p>	

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	<p>during the preceding fiscal year;            `(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;            `(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);            `(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);            `(H) the balance of the Fund at the end of the preceding fiscal year; and            `(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.</p> <p> `(h) Protection of Whistleblowers-</p> <p> `(1) PROHIBITION AGAINST RETALIATION-</p> <p> `(A) IN GENERAL- No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower--</p> <p> `(i) in providing information to the Commission in accordance with subsection (b); or</p> <p> `(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.</p> <p> `(B) ENFORCEMENT-</p> <p> `(i) CAUSE OF ACTION- An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C), unless the individual who is alleging discharge or other discrimination in violation of subparagraph (A) is an employee of the federal government, in which case the individual shall only bring an action under section 1221 of title 5 United States Code.</p> <p> `(ii) SUBPOENAS- A subpoena requiring the</p>	

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	<p>attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.</p> <p>“(iii) <i>STATUTE OF LIMITATIONS</i>- An action under this subsection may not be brought more than 2 years after the date on which the violation reported in subparagraph (A) is committed.</p> <p>“(C) <i>RELIEF</i>- Relief for an individual prevailing in an action brought under subparagraph (B) shall include--</p> <p>“(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;</p> <p>“(ii) the amount of back pay otherwise owed to the individual, with interest; and</p> <p>“(iii) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.</p> <p>“(2) <i>CONFIDENTIALITY</i>-</p> <p>“(A) <i>INFORMATION PROVIDED</i>-</p> <p>“(i) <i>IN GENERAL</i>- Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of a department or agency of the Federal Government, under section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’) or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B).</p> <p>“(ii) <i>CONSTRUCTION</i>- For purposes of section 552 of title 5, United States Code, this paragraph shall be considered to be a statute described in subsection (b)(3)(B) of that</p>	

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	<p><i>section.</i></p> <p><i>“(iii) EFFECT- Nothing in this paragraph is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.</i></p> <p><i>“(B) AVAILABILITY TO GOVERNMENT AGENCIES-</i></p> <p><i>“(i) IN GENERAL- Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary or appropriate to accomplish the purposes of this Act and protect customers and in accordance with clause (ii), be made available to--</i></p> <p><i>“(I) the Department of Justice;</i></p> <p><i>“(II) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;</i></p> <p><i>“(III) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));</i></p> <p><i>“(IV) a State attorney general in connection with any criminal investigation;</i></p> <p><i>“(V) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and</i></p> <p><i>“(VI) a foreign futures authority.</i></p> <p><i>“(ii) MAINTENANCE OF INFORMATION- Each of the entities, agencies, or persons described in clause (i) shall maintain information described in that clause as confidential and privileged, in accordance with the requirements in subparagraph (A).</i></p> <p><i>“(3) RIGHTS RETAINED- Nothing in this section shall be</i></p>	

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	<p><i>deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.</i></p> <p><i>“(i) Rulemaking Authority- The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.</i></p> <p><i>“(j) Implementing Rules- The Commission shall issue final rules or regulations implementing the provisions of this section not later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.</i></p> <p><i>“(k) Original Information- Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing this section shall not lose its status as original information solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.</i></p> <p><i>“(l) Awards- A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.</i></p> <p><i>“(m) Provision of False Information- A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.’.</i></p>	
	<p><b>SEC. 749. CONFORMING AMENDMENTS.</b></p> <p><i>(a) Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended, in the matter preceding subparagraph (A), by striking ‘5a (to the extent provided in section 5a(g))’,</i></p> <p><i>(b) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended--</i></p> <p style="padding-left: 40px;"><i>(1) in subsection (a)--</i></p> <p style="padding-left: 80px;"><i>(A) in the matter preceding paragraph (1)--</i></p> <p style="padding-left: 120px;"><i>(i) by striking ‘engage as’ and inserting ‘be a’;</i></p> <p style="padding-left: 120px;"><i>and</i></p>	

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	<p>(ii) by striking `or introducing broker' and all that follows through `or derivatives transaction execution facility';</p> <p>(B) in paragraph (1), by striking `or introducing broker'; and</p> <p>(C) in paragraph (2), by striking `if a futures commission merchant,'; and</p> <p>(2) by adding at the end the following:</p> <p>`(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.'</p> <p>(c) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended--</p> <p>(1) by striking `(3) Subsection (1) of this section' and inserting the following:</p> <p>`(3) EXCEPTION-</p> <p>    (A) IN GENERAL- Paragraph (1)'; and</p> <p>(2) by striking `to any investment trust' and all that follows through the period at the end and inserting the following: `to any commodity pool that is engaged primarily in trading commodity interests.</p> <p>    (B) ENGAGED PRIMARILY- For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be `engaged primarily' in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of advising on commodity interests or investing, reinvesting, owning, holding, or trading in commodity interests, respectively.</p> <p>    (C) COMMODITY INTERESTS- For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on physical commodities, and any monies held in an account used for trading commodity interests.'</p> <p>(d) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended--</p> <p>(1) in subsection (a)(1)--</p>	

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	<p>(A) by striking ` 5a(d),'; and  (B) by striking `and section (2)(h)(7) with respect to significant price discovery contracts,'; and  (2) in subsection (f)(1), by striking `section 4d(c) of this Act' and inserting `section 4d(e)'.  (e) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking `or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,'.  (f) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking `, or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,'.  (g) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended--  (1) by striking `section 2(c), 2(d), 2(f), or 2(g) of this Act' and inserting `section 2(c), 2(f), or 2(i) of this Act'; and  (2) by striking `2(h) or'.  (h) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking `section 4d(c) of this Act' and inserting `section 4d(e)'.  (i) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking `section 2(h)(7) or'.  (j) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended--  (1) by striking `section 2(c), 2(d), 2(f), or (2)(g) of such Act' and inserting `section 2(c), 2(f), or 2(i) of that Act'; and  (2) by striking `2(h) or'.</p>	
	<p><b>SEC. 750. STUDY ON OVERSIGHT OF CARBON MARKETS.</b></p> <p>(a) <i>Interagency Working Group</i>- There is established to carry out this section an interagency working group (referred to in this section as the `interagency group') composed of the following members or designees:  (1) <i>The Chairman of the Commodity Futures Trading Commission</i> (referred to in this section as the `Commission'), who shall serve as Chairman of the interagency group.  (2) <i>The Secretary of Agriculture.</i>  (3) <i>The Secretary of the Treasury.</i>  (4) <i>The Chairman of the Securities and Exchange Commission.</i>  (5) <i>The Administrator of the Environmental Protection Agency.</i>  (6) <i>The Chairman of the Federal Energy Regulatory Commission.</i></p>	

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	<p>(7) <i>The Commissioner of the Federal Trade Commission.</i></p> <p>(8) <i>The Administrator of the Energy Information Administration.</i></p> <p>(b) <i>Administrative Support- The Commission shall provide the interagency group such administrative support services as are necessary to enable the interagency group to carry out the functions of the interagency group under this section.</i></p> <p>(c) <i>Consultation- In carrying out this section, the interagency group shall consult with representatives of exchanges, clearinghouses, self-regulatory bodies, major carbon market participants, consumers, and the general public, as the interagency group determines to be appropriate.</i></p> <p>(d) <i>Study- The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.</i></p> <p>(e) <i>Report- Not later than 180 days after the date of enactment of this Act, the interagency group shall submit to Congress a report on the results of the study conducted under subsection (b), including recommendations for the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.</i></p>	
	<p><b>SEC. 751. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.</b></p> <p><i>Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) (as amended by section 727) is amended by adding at the end the following:</i></p> <p><b>(15) ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE-</b></p> <p><b>(A) ESTABLISHMENT-</b></p> <p><b>(i) IN GENERAL-</b> <i>An Energy and Environmental Markets Advisory Committee is hereby established.</i></p> <p><b>(ii) MEMBERSHIP-</b> <i>The Committee shall have 9 members.</i></p> <p><b>(iii) ACTIVITIES-</b> <i>The Committee's objectives and scope of activities shall be--</i></p> <p><b>(I)</b> <i>to conduct public meetings;</i></p> <p><b>(II)</b> <i>to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and</i></p> <p><b>(III)</b> <i>otherwise to serve as a vehicle</i></p>	

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	<p style="text-align: center;"><i>for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.</i></p> <p>“(B) REQUIREMENTS-</p> <p>    “(i) IN GENERAL- <i>The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.</i></p> <p>    “(ii) MEMBERS- <i>Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.</i></p> <p>“(C) APPOINTMENT- <i>The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.</i></p> <p>“(D) REIMBURSEMENT- <i>Members shall be entitled to per diem and travel expense reimbursement by the Commission.</i></p> <p>“(E) FACA- <i>The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).’.</i></p>	
	<p><b>SEC. 753. ANTIMARKET MANIPULATION AUTHORITY.</b></p> <p><i>(a) Prohibition Regarding Manipulation and False Information- Subsection (c) of section 6 of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended to read as follows:</i></p> <p>“(c) <i>Prohibition Regarding Manipulation and False Information-</i></p> <p>    “(1) PROHIBITION AGAINST MANIPULATION- <i>It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010.</i></p> <p>    “(A) SPECIAL PROVISION FOR MANIPULATION BY FALSE REPORTING- <i>Unlawful manipulation for</i></p>	

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	<p><i>purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact, that such report is false, misleading or inaccurate.</i></p> <p><i>“(B) EFFECT ON OTHER LAW- Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 9(a)(2).</i></p> <p><i>“(2) PROHIBITION REGARDING FALSE INFORMATION- It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this Act, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.</i></p> <p><i>“(3) OTHER MANIPULATION- In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.</i></p> <p><i>“(4) ENFORCEMENT-</i></p> <p><i>“(A) AUTHORITY OF COMMISSION- If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this subsection, or any other provision of this Act (including any rule, regulation, or order of the Commission promulgated in accordance with this subsection or any other provision of this Act), the Commission may serve upon the person a complaint.</i></p> <p><i>“(B) CONTENTS OF COMPLAINT- A complaint under subparagraph (A) shall--</i></p> <p><i>“(i) contain a description of the charges against the person that is the subject of the</i></p>	

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	<p>complaint; and</p> <p>“(ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.</p> <p>“(C) HEARING- A hearing described in subparagraph (B)(ii)--</p> <p>“(i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);</p> <p>“(ii) shall require the person to show cause regarding why--</p> <p>“(I) an order should not be made--</p> <p>“(aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and</p> <p>“(bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and</p> <p>“(II) the registration of the person, if registered with the Commission in any capacity, should not be suspended or revoked; and</p> <p>“(iii) may be held before--</p> <p>“(I) the Commission; or</p> <p>“(II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.</p> <p>“(5) SUBPOENA- For the purpose of securing effective enforcement of the provisions of this Act, for the purpose of any investigation or proceeding under this Act, and for the purpose of any action taken under section 12(f) of this Act, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.</p>	

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	<p><i>“(6) WITNESSES- The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.</i></p> <p><i>“(7) SERVICE- A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.</i></p> <p><i>“(8) REFUSAL TO OBEY- In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.</i></p> <p><i>“(9) FAILURE TO OBEY- Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.</i></p> <p><i>“(10) EVIDENCE- On the receipt of evidence under paragraph (4)(C)(iii), the Commission may--</i></p> <p style="padding-left: 40px;"><i>“(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;</i></p> <p style="padding-left: 40px;"><i>“(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;</i></p> <p style="padding-left: 40px;"><i>“(C) assess such person--</i></p> <p style="padding-left: 80px;"><i>“(i) a civil penalty of not more than an amount</i></p>	

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	<p>equal to the greater of--</p> <p>    (I) \$140,000; or</p> <p>    (II) triple the monetary gain to such person for each such violation; or</p> <p>    (ii) in any case of manipulation or attempted manipulation in violation of this subsection or section 9(a)(2), a civil penalty of not more than an amount equal to the greater of--</p> <p>        (I) \$1,000,000; or</p> <p>        (II) triple the monetary gain to the person for each such violation; and</p> <p>    (D) require restitution to customers of damages proximately caused by violations of the person.</p> <p>(11) ORDERS-</p> <p>    (A) NOTICE- The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by--</p> <p>        (i) registered mail;</p> <p>        (ii) certified mail; or</p> <p>        (iii) personal delivery.</p> <p>    (B) REVIEW-</p> <p>        (i) IN GENERAL- A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).</p> <p>        (ii) PETITION- To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals--</p> <p>            (I) for the circuit in which the petitioner carries out the business of the petitioner; or</p> <p>            (II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.</p> <p>    (C) PROCEDURE-</p>	

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	<p> <i>“(i) DUTY OF CLERK OF APPROPRIATE COURT- The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the Commission a copy of a petition filed under subparagraph (B)(ii).</i>  <i>“(ii) DUTY OF COMMISSION- In accordance with section 2112 of title 28, United States Code, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.</i>  <i>“(iii) JURISDICTION OF APPROPRIATE COURT- Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) shall have jurisdiction to affirm, set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.’.</i> </p> <p> <i>(b) Cease and Desist Orders, Fines- Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended to read as follows:</i>  <i>“(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$140,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9 of this Act, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c). Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.’.</i> </p> <p> <i>(c) Manipulations; Private Rights of Action- Section 22(a)(1) of the</i> </p>	

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	<p><i>Commodity Exchange Act (7 U.S.C. 25(a)(1)) is amended by striking subparagraph (D) and inserting the following:</i></p> <p><i>“(D) who purchased or sold a contract referred to in subparagraph (B) hereof or swap if the violation constitutes--</i></p> <p><i>    (i) the use or employment of, or an attempt to use or employ, in connection with a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative device or contrivance in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010; or</i></p> <p><i>    (ii) a manipulation of the price of any such contract or swap or the price of the commodity underlying such contract or swap.’.</i></p> <p><i>(d) Effective Date-</i></p> <p><i>(1) The amendments made by this section shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission pursuant to this Act takes effect.</i></p> <p><i>(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rulemaking necessary to implement the amendments contained in this section.</i></p>	
	<p><b><i>SEC. 765. RULEMAKING ON CONFLICT OF INTEREST.</i></b></p> <p><i>(a) In General- Not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the Securities and Exchange Commission shall determine whether to adopt rules to establish limits on the control of any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of \$50,000,000,000 or more, a nonbank financial company (as defined in section 102) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a</i></p>	

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	<p><i>bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.</i></p> <p><i>(b) Purposes- The Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.</i></p>	
	<p><b>SEC. 769. DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940.</b></p> <p><i>Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2) is amended by adding at the end the following:</i></p> <p><i>(54) The terms `commodity pool', `commodity pool operator', `commodity trading advisor', `major swap participant', `swap', `swap dealer', and `swap execution facility' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).'</i></p>	
	<p><b>SEC. 770. DEFINITIONS UNDER THE INVESTMENT ADVISORS ACT OF 1940.</b></p> <p><i>Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2) is amended by adding at the end the following:</i></p> <p><i>(29) The terms `commodity pool', `commodity pool operator', `commodity trading advisor', `major swap participant', `swap', `swap dealer', and `swap execution facility' have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).'</i></p>	