

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
OFFERED BY MR. GARRETT OF NEW JERSEY**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

**4 TITLE I—AMENDMENTS TO THE
5 COMMODITY EXCHANGE ACT**

6 SEC. 100. DEFINITIONS.

7 Section 1a of the Commodity Exchange Act (7 U.S.C.
8 1a) is amended by adding at the end the following:

9 “(35) SWAP.—

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

13 “(i) is a put, call, cap, floor, collar, or
14 similar option of any kind for the purchase
15 or sale of, or based on the value of, one or
16 more interest or other rates, currencies,
17 commodities, securities, instruments of in-
18 debtedness, indices, quantitative measures,

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

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

10 “(iii) provides on an executory basis
11 for the exchange, on a fixed or contingent
12 basis, of one or more payments based on
13 the value or level of one or more interest
14 or other rates, currencies, commodities, se-
15 curities, instruments of indebtedness, indi-
16 ces, quantitative measures, or other finan-
17 cial or economic interests or property of
18 any kind, or any interest therein or based
19 on the value thereof, and that transfers, as
20 between the parties to the transaction, in
21 whole or in part, the financial risk associ-
22 ated with a future change in any such
23 value or level without also conveying a cur-
24 rent or future direct or indirect ownership
25 interest in an asset (including any enter-

1 prise or investment pool) or liability that
2 incorporates the financial risk so trans-
3 ferred, including any agreement, contract,
4 or transaction commonly known as an in-
5 terest rate swap, a rate floor, rate cap,
6 rate collar, cross-currency rate swap, basis
7 swap, currency swap, total return swap,
8 equity index swap, equity swap, debt index
9 swap, debt swap, credit spread, credit de-
10 fault swap, credit swap, weather swap, en-
11 ergy swap, metal swap, agricultural swap,
12 emissions swap, or commodity swap;

13 “(iv) is an agreement, contract, or
14 transaction that is, or in the future be-
15 comes, commonly known to the trade as a
16 swap; or

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

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

23 “(i) any contract of sale of a com-
24 modity for future delivery or security fu-
25 tures product traded on or subject to the

1 rules of any board of trade designated as
2 a contract market under section 5 or 5f;

3 “(ii) any sale of a nonfinancial com-
4 modity for deferred shipment or delivery,
5 so long as such transaction is physically
6 settled;

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

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

21 “(v) any agreement, contract, or
22 transaction providing for the purchase or
23 sale of one or more securities on a fixed
24 basis that is subject to the Securities Act
25 of 1933 (15 U.S.C. 77a et seq.) and the

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

3 “(vi) any agreement, contract, or
4 transaction providing for the purchase or
5 sale of one or more securities on a contin-
6 gent basis that is subject to the Securities
7 Act of 1933 (15 U.S.C. 77a et seq.) and
8 the Securities Exchange Act of 1934 (15
9 U.S.C. 78a et seq.), unless such agree-
10 ment, contract, or transaction predicates
11 such purchase or sale on the occurrence of
12 a bona fide contingency that might reason-
13 ably be expected to affect or be affected by
14 the creditworthiness of a party other than
15 a party to the agreement, contract, or
16 transaction;

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

21 “(viii) any agreement, contract, or
22 transaction that is—

23 “(I) based on a security; and

24 “(II) entered into directly or
25 through an underwriter (as defined in

1 section 2(a)(11) of the Securities Act
2 of 1933) (15 U.S.C. 77b(a)(11)) by
3 the issuer of such security for the
4 purposes of raising capital, unless
5 such agreement, contract, or trans-
6 action is entered into to manage a
7 risk associated with capital raising;
8 “(ix) any foreign exchange swap;
9 “(x) any foreign exchange forward;
10 “(xi) any agreement, contract, or
11 transaction a counterparty of which is a
12 Federal Reserve bank or the United States
13 Government, or an agency of the United
14 States Government that is expressly
15 backed by the full faith and credit of the
16 United States; and
17 “(xii) any security-based swap, other
18 than a security-based swap as described in
19 paragraph (36)(C).

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

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

10 “(36) SECURITY-BASED SWAP.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), the term ‘security-based
13 swap’ means any agreement, contract, or trans-
14 action that would be a swap under paragraph
15 (35) (without regard to paragraph
16 (35)(B)(xii)), and that—

17 “(i) is based on an index that is a
18 narrow-based security index, including any
19 interest therein or based on the value
20 thereof;

21 “(ii) is based on a single security or
22 loan, including any interest therein or
23 based on the value thereof; or

24 “(iii) is based on the occurrence, non-
25 occurrence, or extent of the occurrence of

1 an event relating to a single issuer of a se-
2 curity or the issuers of securities in a nar-
3 row-based security index, provided that
4 such event must directly affect the finan-
5 cial statements, financial condition, or fi-
6 nancial obligations of the issuer.

7 “(B) EXCLUSION.—The term ‘security-
8 based swap’ does not include any agreement,
9 contract, or transaction that meets the defini-
10 tion of security-based swap only because it ref-
11 erences or is based upon a government security.

12 “(C) MIXED SWAP.—The term ‘security-
13 based swap’ includes any agreement, contract,
14 or transaction that is as described in subpara-
15 graph (A) and also is based on the value of one
16 or more interest or other rates, currencies, com-
17 modities, instruments of indebtedness, indices,
18 quantitative measures, other financial or eco-
19 nomic interest or property of any kind (other
20 than a single security or a narrow-based secu-
21 rity index), or the occurrence, non-occurrence,
22 or the extent of the occurrence of an event or
23 contingency associated with a potential finan-
24 cial, economic, or commercial consequence

1 (other than an event described in subparagraph
2 (A)(iii)).

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

19 “(37) SWAP DEALER.—

20 “(A) IN GENERAL.—The term ‘swap deal-
21 er’ means any person engaged in the business
22 of buying and selling swaps for such person’s
23 own account, through a broker or otherwise,
24 that is regulated by a Prudential Regulator.

1 “(B) EXCEPTION.—The term ‘swap dealer’
2 does not include a person that buys or sells
3 swaps for such person’s own account, either in-
4 dividualy or in a fiduciary capacity, but not as
5 a part of a regular business.

6 “(38) SECURITY-BASED SWAP DEALER.—

7 “(A) IN GENERAL.—The term ‘security-
8 based swap dealer’ means any person engaged
9 in the business of buying and selling security-
10 based swaps for such person’s own account,
11 through a broker or otherwise, that is regulated
12 by a Prudential Regulator.

13 “(B) EXCEPTION.—The term ‘security-
14 based swap dealer’ does not include a person
15 that buys or sells security-based swaps for such
16 person’s own account, either individually or in
17 a fiduciary capacity, but not as a part of a reg-
18 ular business.

19 “(39) MAJOR SWAP PARTICIPANT.—

20 “(A) IN GENERAL.—The term ‘major swap
21 participant’ means any person who is not a
22 swap dealer, who maintains a substantial net
23 position in outstanding swaps, excluding posi-
24 tions held primarily for hedging (including bal-
25 ance sheet hedging) or risk management pur-

1 poses, and who is regulated by a Prudential
2 Regulator. A person may be designated as a
3 major swap participant for 1 or more individual
4 types of swaps.

5 “(B) DEFINITION OF ‘SUBSTANTIAL NET
6 POSITION’.— The Commission and the Securi-
7 ties and Exchange Commission shall jointly de-
8 fine by rule or regulation the term ‘substantial
9 net position’ at a threshold that the regulators
10 determine prudent for the effective monitoring,
11 management and oversight of the financial sys-
12 tem.

13 “(40) MAJOR SECURITY-BASED SWAP PARTICI-
14 PANT.—

15 “(A) IN GENERAL.—The term ‘major secu-
16 rity-based swap participant’ means any person
17 who is not a security-based swap dealer, who
18 maintains a substantial net position in out-
19 standing security-based swaps, excluding posi-
20 tions held primarily for commercial hedging (in-
21 cluding balance sheet hedging) or financial risk
22 management purposes, and who is regulated by
23 a Prudential Regulator. A person may be des-
24 ignated as a major security-based swap partici-

1 pant for 1 or more individual types of security-
2 based swaps.

3 “(B) DEFINITION OF ‘SUBSTANTIAL NET
4 POSITION’.—The Commission and the Securi-
5 ties and Exchange Commission shall jointly de-
6 fine by rule or regulation the term ‘substantial
7 net position’ at a threshold that the regulators
8 determine prudent for the effective monitoring,
9 management and oversight of the financial sys-
10 tem.

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

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

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

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

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

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

3 “(iii) a bank holding company (as de-
4 fined in section 2 of the Bank Holding
5 Company Act of 1956);

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

10 “(i) a national bank; or

11 “(ii) a federally chartered branch or
12 agency of a foreign bank;

13 “(C) the Federal Deposit Insurance Cor-
14 poration, in the case of a swap dealer, major
15 swap participant, security-based swap dealer or
16 major security-based swap participant that is a
17 State-chartered bank that is not a member of
18 the Federal Reserve System; or

19 “(D) the Office of Thrift Supervision, in
20 the case of a savings association (as defined in
21 section 2 of the Home Owners’ Loan Act) or a
22 savings and loan holding company (as defined
23 in section 10 of such Act).

24 “(44) SWAP REPOSITORY.—The term ‘swap re-
25 pository’ means an entity that collects and maintains

1 the records of the terms and conditions of swaps or
2 security-based swaps entered into by third parties.”.

3 **SEC. 101. SWAP REPOSITORIES.**

4 (a) SWAP REPOSITORIES.—The Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.) is amended by inserting
6 after section 20 the following:

7 **“SEC. 21. SWAP REPOSITORIES.**

8 “(a) REQUIRED REPORTING.—

9 “(1) IN GENERAL.—

10 “(A) IN GENERAL.—Any swap that is not
11 accepted for clearing by a derivatives clearing
12 organization shall be reported to either a swap
13 repository registered pursuant to subsection (b)
14 or, if there is no repository that would accept
15 the swap, to the Commission in accordance with
16 section 4r within such time period as the Com-
17 mission may by rule prescribe.

18 “(B) AUTHORITY OF SWAP DEALER TO RE-
19 PORT.—Counterparties to a swap may agree as
20 to which counterparty will report such swap as
21 required by subparagraph (A). In any swap
22 where only one counterparty is a swap dealer,
23 the swap dealer shall report the swap.

1 “(2) TRANSITION RULES.—Rules adopted by
2 the Commission under this section shall provide for
3 the reporting of data, as follows:

4 “(A) Swaps that were entered into before
5 the date of enactment of the Over-the-Counter
6 Derivatives Markets Act of 2009 shall be re-
7 ported to a registered swap repository or the
8 Commission no later than 270 days after the
9 effective date of such Act.

10 “(B) Swaps that were entered into on or
11 after the date of enactment of the Over-the-
12 Counter Derivatives Markets Act of 2009 shall
13 be reported to a registered swap repository or
14 the Commission no later than the later of—

15 “(i) 180 days after the effective date
16 of such Act; or

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

20 “(b) SWAP REPOSITORIES.—

21 “(1) REGISTRATION REQUIREMENT.—

22 “(A) IN GENERAL.—It shall be unlawful
23 for a swap repository, unless registered with the
24 Commission, directly or indirectly to make use
25 of the mails or any means or instrumentality of

1 interstate commerce to perform the functions of
2 a swap repository.

3 “(B) INSPECTION AND EXAMINATION.—
4 Registered swap repositories shall be subject to
5 inspection and examination by any representa-
6 tives of the Commission.

7 “(2) STANDARD SETTING.—

8 “(A) DATA IDENTIFICATION.—The Com-
9 mission shall prescribe standards that specify
10 the data elements for each swap that shall be
11 collected and maintained by each swap reposi-
12 tory.

13 “(B) DATA COLLECTION AND MAINTEN-
14 NANCE.—The Commission shall prescribe data
15 collection and data maintenance standards for
16 swap repositories.

17 “(C) COMPARABILITY.—The standards
18 prescribed by the Commission under this sub-
19 section shall be comparable to the data stand-
20 ards imposed by the Commission on derivatives
21 clearing organizations that clear swaps.

22 “(3) DUTIES.—A swap repository shall—

23 “(A) accept data prescribed by the Com-
24 mission for each swap under paragraph (2);

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

4 “(C) provide to the Commission, or its des-
5 ignee, such information as is required by, and
6 in a form and at a frequency to be determined
7 by, the Commission, in order to comply with the
8 public reporting requirements contained in sec-
9 tion 8(j); and

10 “(D) make available, on a confidential
11 basis, all data obtained by the swap repository,
12 including individual counterparty trade and po-
13 sition data, to the Commission, the appropriate
14 Federal banking agencies, the Commodity Fu-
15 tures Trading Commission, the Financial Serv-
16 ices Oversight Council, and the Department of
17 Justice or to other persons the Commission
18 deems appropriate, including foreign financial
19 supervisors (including foreign futures authori-
20 ties), foreign central banks, and foreign min-
21 istries.

22 “(4) REQUIRED REGISTRATION FOR SWAP RE-
23 POSITORIES.—Any person that is required to be reg-
24 istered as a swap repository under this subsection
25 shall register with the Commission, regardless of

1 whether that person also is registered with the Secu-
2 rities and Exchange Commission as a security-based
3 swap repository.

4 “(5) HARMONIZATION OF RULES.—Not later
5 than 270 days after the date of enactment of the
6 Over-the-Counter Derivatives Markets Act of 2009,
7 the Commission and the Securities and Exchange
8 Commission shall jointly adopt uniform rules gov-
9 erning persons that are registered under this section
10 and persons that are registered as security-based
11 swap repositories under the Securities Exchange Act
12 of 1934 (15 U.S.C. 78a et seq.), including uniform
13 rules that specify the data elements that shall be col-
14 lected and maintained by each repository.

15 “(6) EXEMPTIONS.—The Commission may ex-
16 empt, conditionally or unconditionally, a swap repos-
17 itory from the requirements of this section if the
18 Commission finds that such swap repository is sub-
19 ject to comparable, comprehensive supervision or
20 regulation on a consolidated basis by the Securities
21 and Exchange Commission, a Prudential Regulator
22 or the appropriate governmental authorities in the
23 organization’s home country.”.

1 (b) REPORTING AND RECORDKEEPING.—The Com-
2 modify Exchange Act (7 U.S.C. 1 et seq.) is amended by
3 inserting after section 4q the following:

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

6 “(a) IN GENERAL.—Any person who enters into a
7 swap that is not accepted for clearing by a derivatives
8 clearing organization and is not reported to a swap reposi-
9 tory registered pursuant to section 21 shall meet the re-
10 quirements in subsection (b).

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

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

17 “(2) keep books and records pertaining to the
18 security-based swaps held by the person in such
19 form and manner and for such period as may be re-
20 quired by the Commission, which books and records
21 shall be open to inspection by any representative of
22 the Commission, an appropriate Federal banking
23 agency, the Securities and Exchange Commission,
24 the Financial Services Oversight Council, and the
25 Department of Justice.

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

6 (c) PUBLIC REPORTING OF AGGREGATE SWAP
7 DATA.—Section 8 of such Act (7 U.S.C. 12) is amended
8 by adding at the end the following:

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

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

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

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

25 “(A) derivatives clearing organizations;

1 “(B) swap repositories pursuant to section
2 21(c)(3); and

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

5 **SEC. 102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS**
6 **AND MAJOR SWAP PARTICIPANTS.**

7 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
8 is amended by inserting after section 4r (as added by sec-
9 tion 101(b) of this Act) the following:

10 **“SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS**
11 **DEALERS AND CERTAIN MAJOR SWAP PAR-**
12 **TICIPANTS.**

13 “Each Prudential Regulator shall impose both initial
14 and variation margin requirements on all swaps between
15 swap dealers and major swap participants subject to regu-
16 lation by the Regulator, that are not cleared by a deriva-
17 tives clearing organization.”.

18 **SEC. 103. SEGREGATION OF ASSETS HELD AS COLLATERAL**
19 **IN SWAP TRANSACTIONS.**

20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
21 is amended by inserting after section 4s (as added by sec-
22 tion 102 of this Act) the following:

1 **“SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
2 **IN SWAP TRANSACTIONS.**

3 “(a) CLEARED SWAPS.—A swap dealer, futures com-
4 mission merchant, or derivatives clearing organization by
5 or through which funds or other property are held as mar-
6 gin or collateral to secure the obligations of a counterparty
7 under a swap to be cleared by or through a derivatives
8 clearing organization shall segregate, maintain, and use
9 the funds or other property for the benefit of the
10 counterparty, in accordance with such rules and relations
11 as the Commission or Prudential Regulator shall pre-
12 scribe. Any such funds or other property shall be treated
13 as customer property under this Act.

14 “(b) OVER-THE-COUNTER SWAPS.—At the request of
15 a swap counterparty who provides funds or other property
16 to a swap dealer as margin or collateral to secure the obli-
17 gations of the counterparty under a swap entered into
18 using the mails or any other means or instrumentalities
19 of interstate commerce between the counterparty and the
20 swap dealer that is not submitted for clearing to a deriva-
21 tives clearing organization, the swap dealer shall segregate
22 the funds or other property for the benefit of the
23 counterparty, and maintain the funds or other property
24 in an account which is carried by a third-party custodian
25 and designated as a segregated account for the
26 counterparty, in accordance with such rules and regula-

1 tions as the Commission or Prudential Regulator may pre-
2 scribe. Any such funds and property may, with the agree-
3 ment of the customer, be commingled with the funds and
4 property of other swap counterparties and customers and
5 shall be eligible for treatment as customer property under
6 this Act. This subsection shall not be interpreted to pre-
7 clude commercial arrangements regarding the investment
8 of the segregated funds or other property and the related
9 allocation of gains and losses resulting from any such in-
10 vestment or regarding the allocation of the costs of seg-
11 regation.

12 “(c) MARK-TO-MARKET MARGIN.—Nothing in this
13 section shall be construed to obligate any person to seg-
14 regate variation or mark-to-market margin.”

15 **TITLE II—AMENDMENTS TO THE**
16 **SECURITIES EXCHANGE ACT**
17 **OF 1934**

18 **SEC. 201. DEFINITIONS.**

19 Section 3(a) of the Securities Exchange Act of 1934
20 (15 U.S.C. 78c(a)) is amended by adding at the end the
21 following:

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

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

5 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
6 PANT.—The term ‘major security-based swap partici-
7 pant’ has the same meaning as in section 1a(41) of
8 the Commodity Exchange Act (7 U.S.C. 1a(41)).

9 “(68) PRUDENTIAL REGULATOR.—The term
10 ‘Prudential Regulator’ has the same meaning as in
11 section 1a(43) of the Commodity Exchange Act (7
12 U.S.C. 1a(43)).

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

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

19 “(71) SECURITY-BASED SWAP.—The term ‘se-
20 curity-based swap’ has the same meaning as in sec-
21 tion 1a(38) of the Commodity Exchange Act (7
22 U.S.C. 1a(38)).

23 “(72) SECURITY-BASED SWAP DEALER.—The
24 term ‘security-based swap dealer’ has the same

1 meaning as in section 1a(44) of the Commodity Ex-
2 change Act (7 U.S.C. 1a(44)).”.

3 **SEC. 202. SWAP REPOSITORIES.**

4 (a) IN GENERAL.—The Securities Exchange Act of
5 1934 (15 U.S.C. 78a, et seq.) is amended by adding the
6 following section after section 3A:

7 **“SEC. 3B. SWAP REPOSITORIES.**

8 “(a) REQUIRED REPORTING.—

9 “(1) IN GENERAL.—

10 “(A) IN GENERAL.—Any security-based
11 swap that is not accepted for clearing by any
12 clearing agency shall be reported to either a se-
13 curity-based swap repository registered pursu-
14 ant to subsection (b) or, if there is no reposi-
15 tory that would accept the security-based swap,
16 to the Commission in accordance with section
17 13A within such time period as the Commission
18 may by rule prescribe.

19 “(B) AUTHORITY OF SWAP DEALER TO RE-
20 PORT.—Counterparties to a security-based swap
21 may agree as to which counterparty will report
22 such swap as required by subparagraph (A). In
23 any security-based swap where only one
24 counterparty is a swap dealer, the swap dealer
25 shall report the swap.

1 “(2) TRANSITION RULES.—Rules adopted by
2 the Commission under this section shall provide for
3 the reporting of data, as follows:

4 “(A) Security-based swaps that were en-
5 tered into before the date of enactment of the
6 Over-the-Counter Derivatives Markets Act of
7 2009 shall be reported to a registered security-
8 based swap repository or the Commission no
9 later than 270 days after the effective date of
10 such Act.

11 “(B) Security-based swaps that were en-
12 tered into on or after the date of enactment of
13 the Over-the-Counter Derivatives Markets Act
14 of 2009 shall be reported to a registered secu-
15 rity-based swap repository or the Commission
16 no later than the later of—

17 “(i) 180 days after the effective date
18 of such Act; or

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

22 “(b) SECURITY-BASED SWAP REPOSITORIES.—

23 “(1) REGISTRATION REQUIREMENT.—

24 “(A) IN GENERAL.—It shall be unlawful
25 for a security-based swap repository, unless reg-

1 istered with the Commission, directly or indi-
2 rectly to make use of the mails or any means
3 or instrumentality of interstate commerce to
4 perform the functions of a security-based swap
5 repository.

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

10 “(2) STANDARD SETTING.—

11 “(A) DATA IDENTIFICATION.—The Com-
12 mission shall prescribe standards that specify
13 the data elements for each security-based swap
14 that shall be collected and maintained by each
15 security-based swap repository.

16 “(B) DATA COLLECTION AND MAINTEN-
17 NANCE.—The Commission shall prescribe data
18 collection and data maintenance standards for
19 security-based swap repositories.

20 “(C) COMPARABILITY.—The standards
21 prescribed by the Commission under this sub-
22 section shall be comparable to the data stand-
23 ards imposed by the Commission on clearing
24 agencies that clear security-based swaps.

1 “(3) DUTIES.—A security-based swap reposi-
2 tory shall—

3 “(A) accept data prescribed by the Com-
4 mission for each security-based swap under this
5 paragraph (2);

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

9 “(C) provide to the Commission, or its des-
10 ignee, such information as is required by, and
11 in a form and at a frequency to be determined
12 by, the Commission, in order to comply with the
13 public reporting requirements contained in sec-
14 tion 13(m); and

15 “(D) make available, on a confidential
16 basis, all data obtained by the security-based
17 swap repository, including individual
18 counterparty trade and position data, to the
19 Commission, the appropriate Federal banking
20 agencies, the Commodity Futures Trading
21 Commission, the Financial Services Oversight
22 Council, and the Department of Justice or to
23 other persons the Commission deems appro-
24 priate, including foreign financial supervisors

1 (including foreign futures authorities), foreign
2 central banks, and foreign ministries.

3 “(4) REQUIRED REGISTRATION FOR SECURITY-
4 BASED SWAP REPOSITORIES.—Any person that is re-
5 quired to be registered as a securities-based swap re-
6 pository under this subsection shall register with the
7 Commission, regardless of whether that person also
8 is registered with the Commodity Futures Trading
9 Commission as a swap repository.

10 “(5) HARMONIZATION OF RULES.—Not later
11 than 270 days after the date of enactment of the
12 Over-the-Counter Derivatives Markets Act of 2009,
13 the Commission and the Commodity Futures Trad-
14 ing Commission shall jointly adopt uniform rules
15 governing persons that are registered under this sec-
16 tion and persons that are registered as swap reposi-
17 tories under the Commodity Exchange Act (7 U.S.C.
18 1, et seq.), including uniform rules that specify the
19 data elements that shall be collected and maintained
20 by each repository.

21 “(6) EXEMPTIONS.—The Commission may ex-
22 empt, conditionally or unconditionally, a security-
23 based swap repository from the requirements of this
24 section if the Commission finds that such security-
25 based swap repository is subject to comparable, com-

1 quired by the Commission, which books and records
2 shall be open to inspection by any representative of
3 the Commission, an appropriate Federal banking
4 agency, the Commodity Futures Trading Commis-
5 sion, the Financial Services Oversight Council, and
6 the Department of Justice.

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

12 (c) PUBLIC REPORTING AND REPOSITORIES FOR SE-
13 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the
14 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
15 amended by adding at the end the following:

16 “(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
17 BASED SWAP DATA.—

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

1 “(2) DESIGNEE OF THE COMMISSION.—The
2 Commission may designate a clearing agency or a
3 security-based swap repository to carry out the pub-
4 lic reporting described in paragraph (1).

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

8 “(A) clearing agencies;

9 “(B) security-based swap repositories reg-
10 istered pursuant to section 3B(b); and

11 “(C) reports received by the Commission
12 pursuant to section 13A.”.

13 **SEC. 203. MARGIN REQUIREMENTS.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
15 et seq.) is amended by adding the following section after
16 section 3B:

17 **“SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED**

18 **SWAP DEALERS AND MAJOR SECURITY-**

19 **BASED SWAP PARTICIPANTS.**

20 “Each Prudential Regulator shall impose both initial
21 and variation margin requirements on all security-based
22 swaps between security-based swap dealers and major se-
23 curity-based swap participants subject to regulation by the
24 Regulator, that are not cleared by a clearing agency.”.

1 **SEC. 204. SEGREGATION OF ASSETS HELD AS COLLATERAL**
2 **IN SWAP TRANSACTIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
4 et seq.) is further amended by adding after section 3C (as
5 added by section 205 the following:

6 **“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
7 **IN SWAP TRANSACTIONS.**

8 “(a) CLEARED SWAPS.—A security-based swap deal-
9 er or clearing agency by or through which funds or other
10 property are held as margin or collateral to secure the obli-
11 gations of a counterparty under a security-based swap to
12 be cleared by or through a derivatives clearing agency
13 shall segregate, maintain, and use the funds or other prop-
14 erty for the benefit of the counterparty, in accordance with
15 such rules and regulations as the Commission or Pruden-
16 tial Regulator shall prescribe. Any such funds or other
17 property shall be treated as customer property under this
18 Act.

19 “(b) OVER-THE-COUNTER SWAPS.—At the request of
20 a counterparty to a security-based swap who provides
21 funds or other property to a swap dealer as margin or
22 collateral to secure the obligations of the counterparty
23 under a security-based swap entered into using the mails
24 or any other means or instrumentalities of interstate com-
25 merce between the counterparty and the swap dealer that
26 is not submitted for clearing to a derivatives clearing agen-

1 cy, the swap dealer shall segregate the funds or other
2 property for the benefit of the counterparty, and maintain
3 the funds or other property in an account which is carried
4 by a third-party custodian and designated as a segregated
5 account for the counterparty, in accordance with such
6 rules and regulations as the Commission or Prudential
7 Regulator may prescribe. This subsection shall not be in-
8 terpreted to preclude commercial arrangements regarding
9 the investment of the segregated funds or other property
10 and the related allocation of gains and losses resulting
11 from any such investment or regarding the allocation of
12 the costs of segregation.

13 “(c) MARK-TO-MARKET MARGIN.—Nothing in this
14 section shall be construed to obligate any person to seg-
15 regate variation or mark-to-market margin.”

16 **TITLE III—COMMON PROVISIONS**

17 **SEC. 301. REPORT TO THE CONGRESS.**

18 Within 1 year after the date of the enactment of this
19 Act, and not less frequently than annually thereafter, the
20 Commodity Futures Trading Commission, the Securities
21 and Exchange Commission, and the Prudential Regulators
22 shall review data from swap repositories, security-based
23 swap repositories, derivative clearing organizations, and
24 clearing agencies, and if the Commodity Futures Trading
25 Commission, the Securities and Exchange Commission,

1 and the Prudential Regulators jointly find that the activi-
2 ties of swaps dealers, securities-based swaps dealers,
3 major swap participants, or major security-based swap
4 participants not subject to regulation by the Commodity
5 Futures Trading Commission, the Securities and Ex-
6 change Commission, or a Prudential Regulator, in relation
7 to swaps or security-based swaps that are not submitted
8 to a derivatives clearing organization or clearing agency
9 for clearing, have become so substantial or imprudent as
10 to potentially threaten the stability of financial markets
11 or the economy, the Commodity Futures Trading Commis-
12 sion, the Securities and Exchange Commission, and the
13 Prudential Regulators shall jointly submit to the Congress
14 a report on the situation, including recommendations as
15 to whether the activities should be subject to further regu-
16 lation.

17 **SEC. 302. CAPITAL REQUIREMENTS.**

18 Each Prudential Regulator shall take into account
19 the swaps and security-based swaps activities of the enti-
20 ties subject to regulation by the Regulator in establishing
21 capital requirements for the entities.

22 **SEC. 303. CENTRALIZED CLEARING.**

23 (a) IN GENERAL.—The Board, in consultation and
24 coordination with the Securities and Exchange Commis-
25 sion and the Commodity Futures Trading Commission,

1 shall implement policies and procedures designed to in-
2 crease the use of central counterparties for clearing of
3 over-the-counter swaps transactions by swap dealers, secu-
4 rity-based swap dealers, major swap participants, and
5 major security-based swap participants, with the goal of
6 significantly reducing the risk profile of the market in
7 which the transactions occur.

8 (b) FIRM TARGETS.—

9 (1) IN GENERAL.—Pursuant to subsection (a),
10 the Board shall establish the following firm goals for
11 swap dealers, security-based swap dealers, major
12 swap participants, and major security-based swap
13 participants, with respect to the clearing of certain
14 swaps:

15 (A) INTEREST RATE SWAPS.—In the case
16 of interest rate swaps, each swap dealer, secu-
17 rity-based swap dealer, major swap participant,
18 and major security-based swap participant shall
19 commit to a goal, beginning December 2009, of
20 submitting for clearing to a derivatives clearing
21 organization or clearing agency—

22 (i) 90 percent of new eligible trades
23 (calculated on a notional basis);

1 (ii) 70 percent of new eligible trades
2 (calculated on a weighted average notional
3 basis); and

4 (iii) 60 percent of historical eligible
5 trades (calculated on a weighted average
6 notional basis).

7 (B) CREDIT DEFAULT SWAPS.—In the case
8 of credit default swaps, each swap dealer, secu-
9 rity-based swap dealer, major swap participant,
10 and major security-based swap participant shall
11 commit to a goal, beginning December 2009, of
12 submitting for clearing to a derivatives clearing
13 organization or clearing agency—

14 (i) 95 percent of new eligible trades
15 (calculated on a notional basis); and

16 (ii) 80 percent of all eligible trades
17 (calculated on a weighted average notional
18 basis).

19 (2) DEFINITIONS.—In paragraph (1):

20 (A) ELIGIBLE TRADE.—The term “eligible
21 trade” means a trade on an eligible product be-
22 tween counterparties each of whom—

23 (i) is a swap dealer, security-based
24 swap dealer, major swap participant, or
25 major security-based swap participant; and

1 (ii) have a clearing relationship in
2 place with 1 or more common derivative
3 clearing organizations or clearing agencies)
4 for the eligible product.

5 (B) ELIGIBLE PRODUCT.—The term “eligi-
6 ble product” means a product eligible for clear-
7 ing by a derivative clearing organization or
8 clearing agency.

9 (c) OTHER CONTRACTS AND COUNTERPARTIES.—
10 The Board, in consultation with the Securities and Ex-
11 change Commission and the Commodity Futures Trading
12 Commission, shall actively engage central counterparties
13 and regulators globally to—

14 (1) broaden the set of derivative products eligi-
15 ble for clearing by swap dealers, security-based swap
16 dealers, major swap participants, and major secu-
17 rity-based swap participants, taking into account
18 risk, liquidity, default management and other proc-
19 esses; and

20 (2) expand the set of counterparties eligible to
21 clear at each eligible central counterparty taking
22 into account appropriate counterparty risk manage-
23 ment considerations, including the development of
24 buy-side clearing.

1 **SEC. 304. DEFINITIONS.**

2 The terms used in this title shall have the meanings
3 given the terms in section 1a of the Commodity Exchange
4 Act.

