

111TH CONGRESS
2D SESSION

S. _____

To improve the regulation of swap and security-based swap activities, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To improve the regulation of swap and security-based swap
activities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Wall Street Transparency and Accountability Act of
6 2010”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

Subtitle A—Regulatory Authority

2

- Sec. 101. Definitions.
- Sec. 102. Review of regulatory authority.
- Sec. 103. Recommendations for changes to portfolio margining laws.
- Sec. 104. Abusive swaps.
- Sec. 105. Authority to prohibit participation in swap activities.
- Sec. 106. Prohibition against Federal Government bailouts of swaps entities.

Subtitle B—Regulation of Swap Markets

- Sec. 111. Definitions.
- Sec. 112. Jurisdiction.
- Sec. 113. Clearing.
- Sec. 114. Swaps; segregation and bankruptcy treatment.
- Sec. 115. Derivatives clearing organizations.
- Sec. 116. Public reporting of swap transaction data.
- Sec. 117. Swap data repositories.
- Sec. 118. Reporting and recordkeeping.
- Sec. 119. Large swap trader reporting.
- Sec. 120. Registration and regulation of swap dealers and major swap participants.
- Sec. 121. Conflicts of interest.
- Sec. 122. Swap execution facilities.
- Sec. 123. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 124. Designated contract markets.
- Sec. 125. Margin.
- Sec. 126. Position limits.
- Sec. 127. Foreign boards of trade.
- Sec. 128. Legal certainty for swaps.
- Sec. 129. Multilateral clearing organizations.
- Sec. 130. Enforcement.
- Sec. 131. Retail commodity transactions.
- Sec. 132. Other authority.
- Sec. 133. Restitution remedies.
- Sec. 134. Enhanced compliance by registered entities.
- Sec. 135. Insider trading.
- Sec. 136. Antidisruptive practices authority.
- Sec. 137. Commodity whistleblower incentives and protection.
- Sec. 138. Conforming amendments.
- Sec. 139. Effective date.

TITLE II—REGULATION OF SECURITY-BASED SWAP MARKETS

- Sec. 201. Definitions under the Securities Exchange Act of 1934.
- Sec. 202. Repeal of prohibition on regulation of security-based swaps.
- Sec. 203. Amendments to the Securities Exchange Act of 1934.
- Sec. 204. Registration and regulation of security-based swap dealers and major security-based swap participants.
- Sec. 205. Reporting and recordkeeping.
- Sec. 206. State gaming and bucket shop laws.
- Sec. 207. Amendments to the Securities Act of 1933.
- Sec. 208. Definitions under the Investment Company Act of 1940.
- Sec. 209. Definitions under the Investment Advisors Act of 1940.
- Sec. 210. Other authority.
- Sec. 211. Jurisdiction.
- Sec. 212. Effective date.

1 **TITLE I—REGULATION OF OVER-**
2 **THE-COUNTER SWAPS MARKETS**
3 **Subtitle A—Regulatory Authority**

4 **SEC. 101. DEFINITIONS.**

5 In this subtitle, the terms “prudential regulator”,
6 “swap”, “swap dealer”, “major swap participant”, “swap
7 data repository”, “associated person of a swap dealer or
8 major swap participant”, “eligible contract participant”,
9 “swap execution facility”, “broad-based security index”,
10 “security-based swap”, “security-based swap dealer”,
11 “major security-based swap participant”, “swap data re-
12 pository”, and “associated person of a security-based swap
13 dealer or major security-based swap participant” have the
14 meanings given the terms in section 1a of the Commodity
15 Exchange Act (7 U.S.C. 1a).

16 **SEC. 102. REVIEW OF REGULATORY AUTHORITY.**

17 (a) CONSULTATION.—

18 (1) COMMODITY FUTURES TRADING COMMIS-
19 SION.—

20 (A) IN GENERAL.—Except as provided in
21 subparagraph (B), before commencing any rule-
22 making or issuing an order regarding swaps,
23 swap dealers, major swap participants, swap
24 data repositories, persons associated with a
25 swap dealer or major swap participant, eligible

1 contract participants, or swap execution facili-
2 ties pursuant to this title (including an amend-
3 ment made by this title), the Commodity Fu-
4 tures Trading Commission shall consult with
5 the Securities and Exchange Commission and
6 the prudential regulators.

7 (B) APPLICABILITY.—The requirements of
8 subparagraph (A) shall not apply to an order
9 issued—

10 (i) in connection with or arising from
11 a violation or potential violation of any
12 provision of the Commodity Exchange Act
13 (7 U.S.C. 1 et seq.); or

14 (ii) in any proceeding that is con-
15 ducted on the record in accordance with
16 sections 556 and 557 of title 5, United
17 States Code.

18 (C) PROCEDURES.—The Commodity Fu-
19 tures Trading Commission shall have sole dis-
20 cretion to determine the appropriate procedures
21 for the consultation required under this para-
22 graph.

23 (D) EFFECT.—Nothing in this paragraph
24 authorizes any consultation or procedure for
25 consultation that is not consistent with the re-

1 requirements of subchapter II of chapter 5, and
2 chapter 7, of title 5, United States Code (com-
3 monly known as the “Administrative Procedure
4 Act”).

5 (2) SECURITIES AND EXCHANGE COMMIS-
6 SION.—

7 (A) IN GENERAL.—Except as provided in
8 subparagraph (B), before commencing any rule-
9 making or issuing an order regarding security-
10 based swaps, security-based swap dealers, major
11 security-based swap participants, security-based
12 swap data repositories, persons associated with
13 a security-based swap dealer or major security-
14 based swap participant, eligible contract partici-
15 pants with regard to security-based swaps, or
16 swap execution facilities pursuant to title II (in-
17 cluding an amendment made by title II), the
18 Securities and Exchange Commission shall con-
19 sult with the Commodity Futures Trading Com-
20 mission and the prudential regulators.

21 (B) APPLICABILITY.—The requirements of
22 subparagraph (A) shall not apply to an order
23 issued—

1 (i) in connection with or arising from
2 a violation or potential violation of any
3 provision of the securities laws; or

4 (ii) in any proceeding that is con-
5 ducted on the record in accordance with
6 sections 556 and 557 of title 5, United
7 States Code.

8 (C) PROCEDURES.—The Securities and
9 Exchange Commission shall have sole discretion
10 to determine the appropriate procedures for the
11 consultation required under this paragraph.

12 (D) EFFECT.—Nothing in this paragraph
13 authorizes any consultation or procedure for
14 consultation that is not consistent with the re-
15 quirements of subchapter II of chapter 5, and
16 chapter 7, of title 5, United States Code (com-
17 monly known as the “Administrative Procedure
18 Act”).

19 (3) RULES; ORDERS.—In developing and pro-
20 mulgating rules or orders pursuant to this sub-
21 section—

22 (A) the Commodity Futures Trading Com-
23 mission shall consider the views of—

24 (i) the Securities and Exchange Com-
25 mission; and

- 1 (ii) the prudential regulators; and
2 (B) the Securities and Exchange Commis-
3 sion shall consider the views of—
4 (i) the Commodity Futures Trading
5 Commission; and
6 (ii) the prudential regulators.

7 (4) TREATMENT OF SIMILAR PRODUCTS AND
8 ENTITIES.—

9 (A) IN GENERAL.—In adopting rules and
10 orders under this subsection, the Commodity
11 Futures Trading Commission and the Securities
12 and Exchange Commission shall treat function-
13 ally or economically similar products or entities
14 described in paragraphs (1) and (2) in a similar
15 manner.

16 (B) EFFECT.—Nothing in this subtitle re-
17 quires the Commodity Futures Trading Com-
18 mission or the Securities and Exchange Com-
19 mission to adopt joint rules or orders that treat
20 functionally or economically similar products or
21 entities described in paragraphs (1) and (2) in
22 an identical manner.

23 (b) LIMITATION.—

24 (1) COMMODITY FUTURES TRADING COMMIS-
25 SION.—Nothing in this title, unless specifically pro-

1 vided, confers jurisdiction on the Commodity Fu-
2 tures Trading Commission to issue a rule, regula-
3 tion, or order providing for oversight or regulation
4 of—

5 (A) security-based swaps; or

6 (B) with regard to its activities or func-

7 tions concerning security-based swaps—

8 (i) security-based swap dealers;

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

11 (iii) security-based swap data reposi-
12 tories;

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

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

18 (vi) swap execution facilities with re-
19 spect to security-based swaps.

20 (2) SECURITIES AND EXCHANGE COMMIS-
21 SION.—Nothing in this title, unless specifically pro-
22 vided, confers jurisdiction on the Securities and Ex-
23 change Commission to issue a rule, regulation, or
24 order providing for oversight or regulation of—

25 (A) swaps; or

- 1 (B) with regard to its activities or func-
2 tions concerning swaps—
- 3 (i) swap dealers;
 - 4 (ii) major swap participants;
 - 5 (iii) swap data repositories;
 - 6 (iv) persons associated with a swap
7 dealer or major swap participant;
 - 8 (v) eligible contract participants with
9 respect to swaps; or
 - 10 (vi) swap execution facilities with re-
11 spect to swaps.

12 (3) PROHIBITION ON CERTAIN FUTURES ASSO-
13 CIATIONS AND NATIONAL SECURITIES ASSOCIA-
14 TIONS.—

15 (A) FUTURES ASSOCIATIONS.—Notwith-
16 standing any other provision of law (including
17 regulations), unless otherwise authorized by this
18 title, no futures association registered under
19 section 17 of the Commodity Exchange Act (7
20 U.S.C. 21) may issue a rule, regulation, or
21 order for the oversight or regulation of, or oth-
22 erwise assert jurisdiction over, for any purpose,
23 any security-based swap.

24 (B) NATIONAL SECURITIES ASSOCIA-
25 TIONS.—Notwithstanding any other provision of

1 law (including regulations), unless otherwise au-
2 thorized by this title, no national securities as-
3 sociation registered under section 15A of the
4 Securities Exchange Act of 1934 (15 U.S.C.
5 78o-3) may issue a rule, regulation, or order
6 for the oversight or regulation of, or otherwise
7 assert jurisdiction over, for any purpose, any
8 swap.

9 (c) OBJECTION TO COMMISSION REGULATION.—

10 (1) FILING OF PETITION FOR REVIEW.—

11 (A) IN GENERAL.—If either Commission
12 referred to in this section determines that a
13 final rule, regulation, or order of the other
14 Commission conflicts with subsection (a)(4) or
15 (b), then the complaining Commission may ob-
16 tain review of the final rule, regulation, or order
17 in the United States Court of Appeals for the
18 District of Columbia Circuit by filing in the
19 court, not later than 60 days after the date of
20 publication of the final rule, regulation, or
21 order, a written petition requesting that the
22 rule, regulation, or order be set aside.

23 (B) EXPEDITED PROCEEDING.—A pro-
24 ceeding described in subparagraph (A) shall be

1 expedited by the United States Court of Ap-
2 peals for the District of Columbia Circuit.

3 (2) TRANSMITTAL OF PETITION AND
4 RECORD.—

5 (A) IN GENERAL.—A copy of a petition de-
6 scribed in paragraph (1) shall be transmitted
7 not later than 1 business day after the date of
8 filing by the complaining Commission to the
9 Secretary of the responding Commission.

10 (B) DUTY OF RESPONDING COMMISSION.—
11 On receipt of the copy of a petition described
12 in paragraph (1), the responding Commission
13 shall file with the United States Court of Ap-
14 peals for the District of Columbia Circuit—

15 (i) a copy of the rule, regulation, or
16 order under review (including any docu-
17 ments referred to therein); and

18 (ii) any other materials prescribed by
19 the United States Court of Appeals for the
20 District of Columbia Circuit.

21 (3) STANDARD OF REVIEW.—The United States
22 Court of Appeals for the District of Columbia Cir-
23 cuit shall—

24 (A) give deference to the views of neither
25 Commission; and

1 (B) determine to affirm or set aside a rule,
2 regulation, or order of the responding Commis-
3 sion under this subsection, based on the deter-
4 mination of the court as to whether the rule,
5 regulation, or order is in conflict with sub-
6 section (a)(4) or (b), as applicable.

7 (4) JUDICIAL STAY.—The filing of a petition by
8 the complaining Commission pursuant to paragraph
9 (1) shall operate as a stay of the rule, regulation, or
10 order until the date on which the determination of
11 the United States Court of Appeals for the District
12 of Columbia Circuit is final (including any appeal of
13 the determination).

14 (d) ADOPTION OF RULES ON UNCLEARED SWAPS.—
15 Notwithstanding subsections (b) and (c), the Commodity
16 Futures Trading Commission and the Securities and Ex-
17 change Commission shall, after consulting with each other
18 Commission, adopt rules—

19 (1) to require the maintenance of records of all
20 activities relating to transactions in swaps and secu-
21 rity-based swaps under the respective jurisdictions of
22 the Commodity Futures Trading Commission and
23 the Securities and Exchange Commission that are
24 uncleared;

1 (2) to make available, consistent with section 8
2 of the Commodity Exchange Act (7 U.S.C. 12), to
3 the Securities and Exchange Commission informa-
4 tion relating to swaps transactions that are
5 uncleared; and

6 (3) to make available to the Commodity Fu-
7 tures Trading Commission information relating to
8 security-based swaps transactions that are
9 uncleared.

10 (e) GLOBAL RULEMAKING TIMEFRAME.—Unless oth-
11 erwise provided in a particular provision of this title, or
12 an amendment made by this title, the Commodity Futures
13 Trading Commission or the Securities and Exchange Com-
14 mission, or both, shall individually, and not jointly, pro-
15 mulgate rules and regulations required of each Commis-
16 sion under this title or an amendment made by this title
17 not later than 180 days after the date of enactment of
18 this Act.

19 (f) EXPEDITED RULEMAKING PROCESS.—The Com-
20 modity Futures Trading Commission or the Securities and
21 Exchange Commission, or both, may use emergency and
22 expedited procedures (including any administrative or
23 other procedure as appropriate) to carry out this title and
24 the amendments made by this title if, in either of the Com-
25 missions' discretion, it considers it necessary to do so.

1 **SEC. 103. RECOMMENDATIONS FOR CHANGES TO PORT-**
2 **FOLIO MARGINING LAWS.**

3 Not later than 180 days after the date of enactment
4 of this Act, the Securities and Exchange Commission, the
5 Commodity Futures Trading Commission, and the pru-
6 dential regulators shall submit to the appropriate commit-
7 tees of Congress recommendations for legislative changes
8 to the Federal laws to facilitate the portfolio margining
9 of securities and commodity futures and options, com-
10 modity options, swaps, and other financial instrument po-
11 sitions.

12 **SEC. 104. ABUSIVE SWAPS.**

13 The Commodity Futures Trading Commission or the
14 Securities and Exchange Commission, or both, individually
15 may, by rule or order—

16 (1) collect information as may be necessary con-
17 cerning the markets for any types of—

18 (A) swap (as defined in section 1a of the
19 Commodity Exchange Act (7 U.S.C. 1a)); or

20 (B) security-based swap (as defined in sec-
21 tion 1a of the Commodity Exchange Act (7
22 U.S.C. 1a)); and

23 (2) issue a report with respect to any types of
24 swaps or security-based swaps that the Commodity
25 Futures Trading Commission or the Securities and

1 Exchange Commission determines to be detrimental
2 to—

3 (A) the stability of a financial market; or

4 (B) participants in a financial market.

5 **SEC. 105. AUTHORITY TO PROHIBIT PARTICIPATION IN**
6 **SWAP ACTIVITIES.**

7 Except as provided in section 4 of the Commodity Ex-
8 change Act (7 U.S.C. 6) (as amended by section 127), if
9 the Commodity Futures Trading Commission or the Secu-
10 rities and Exchange Commission determines that the regu-
11 lation of swaps or security-based swaps markets in a for-
12 eign country undermines the stability of the United States
13 financial system, either Commission, in consultation with
14 the Secretary of the Treasury, may prohibit an entity
15 domiciled in the foreign country from participating in the
16 United States in any swap or security-based swap activi-
17 ties.

18 **SEC. 106. PROHIBITION AGAINST FEDERAL GOVERNMENT**
19 **BAILOUTS OF SWAPS ENTITIES.**

20 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-
21 withstanding any other provision of law (including regula-
22 tions), no Federal assistance may be provided to any
23 swaps entity with respect to any swap, security-based
24 swap, or other activity of the swaps entity.

25 (b) DEFINITIONS.—In this section:

1 (1) FEDERAL ASSISTANCE.—The term “Federal
2 assistance” means the use of any funds, including
3 advances from any Federal Reserve credit facility,
4 discount window, or pursuant to the third undesignated
5 paragraph of section 13 of the Federal Reserve
6 Act (12 U.S.C. 343) (relating to emergency
7 lending authority), or Federal Deposit Insurance
8 Corporation insurance or guarantees for the purpose
9 of—

10 (A) making any loan to, or purchasing any
11 stock, equity interest, or debt obligation of, any
12 swaps entity;

13 (B) purchasing the assets of any swaps en-
14 tity;

15 (C) guaranteeing any loan or debt issuance
16 of any swaps entity; or

17 (D) entering into any assistance arrange-
18 ment (including tax breaks), loss sharing, or
19 profit sharing with any swaps entity.

20 (2) SWAPS ENTITY.—The term “swaps entity”
21 means any swap dealer, security-based swap dealer,
22 major swap participant, major security-based swap
23 participant, swap execution facility, designated con-
24 tract market, national securities exchange, central
25 counterparty, clearing house, clearing agency, or de-

1 derivatives clearing organization that is registered
2 under—

3 (A) the Commodity Exchange Act (7
4 U.S.C. 1 et seq.);

5 (B) the Securities Exchange Act of 1934
6 (15 U.S.C. 78a et seq.); or

7 (C) any other Federal or State law (includ-
8 ing regulations).

9 **Subtitle B—Regulation of Swap** 10 **Markets**

11 **SEC. 111. DEFINITIONS.**

12 (a) IN GENERAL.—Section 1a of the Commodity Ex-
13 change Act (7 U.S.C. 1a) is amended—

14 (1) by redesignating paragraphs (2), (3) and
15 (4), (5) through (17), (18) through (23), (24)
16 through (28), (29), (30), (31) through (33), and
17 (34) as paragraphs (6), (9) and (10), (12) through
18 (24), (27) through (32), (35) through (39), (41),
19 (42), (45) through (47), and (52), respectively;

20 (2) by inserting after paragraph (1) the fol-
21 lowing:

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

1 “(3) ASSOCIATED PERSON OF A SECURITY-
2 BASED SWAP DEALER OR MAJOR SECURITY-BASED
3 SWAP PARTICIPANT.—The term ‘associated person of
4 a security-based swap dealer or major security-based
5 swap participant’ has the meaning given the term in
6 section 3(a) of the Securities Exchange Act of 1934
7 (15 U.S.C. 78c(a)).

8 “(4) ASSOCIATED PERSON OF A SWAP DEALER
9 OR MAJOR SWAP PARTICIPANT.—

10 “(A) IN GENERAL.—The term ‘associated
11 person of a swap dealer or major swap partici-
12 pant’ means—

13 “(i) any partner, officer, director, or
14 branch manager of a swap dealer or major
15 swap participant (including any individual
16 who holds a similar status or performs a
17 similar function with respect to any part-
18 ner, officer, director, or branch manager of
19 a swap dealer or major swap participant);

20 “(ii) any person that directly or indi-
21 rectly controls, is controlled by, or is under
22 common control with, a swap dealer or
23 major swap participant; and

24 “(iii) any employee of a swap dealer
25 or major swap participant.

1 “(B) EXCLUSION.—Other than for pur-
2 poses of section 4s(b)(6), the term ‘associated
3 person of a swap dealer or major swap partici-
4 pant’ does not include any person associated
5 with a swap dealer or major swap participant
6 the functions of which are solely clerical or min-
7 isterial.

8 “(5) BOARD.—The term ‘Board’ means the
9 Board of Governors of the Federal Reserve Sys-
10 tem.”;

11 (3) by inserting after paragraph (6) (as redesign-
12 ated by paragraph (1)) the following:

13 “(7) BROAD-BASED SECURITY INDEX.—The
14 term ‘broad-based security index’ means an index
15 that—

16 “(A) is not a narrow-based security index,
17 as defined in this section;

18 “(B) the Commission and the Securities
19 and Exchange Commission have jointly deter-
20 mined should not be treated as a narrow-based
21 security index; or

22 “(C) the Commission determines to be a
23 broad-based security index.

24 “(8) CLEARED SWAP.—The term ‘cleared swap’
25 means any swap that is, directly or indirectly, sub-

1 mitted to and cleared by a derivatives clearing orga-
2 nization registered with the Commission.”;

3 (4) in paragraph (10) (as redesignated by para-
4 graph (1)), by striking “except onions” and all that
5 follows through the period at the end and inserting
6 the following: “except onions, as provided in section
7 13–1, and motion picture box office receipts, or any
8 index, measure, value, or data related to such re-
9 ceipts, and all services, rights, and interests, except
10 motion picture box office receipts, or any index,
11 measure, value, or data related to such receipts, in
12 which contracts for future delivery are presently or
13 in the future dealt in.”;

14 (5) by inserting after paragraph (10) (as redesi-
15 gnated by paragraph (1)) the following:

16 “(11) COMMODITY POOL.—

17 “(A) IN GENERAL.—The term ‘commodity
18 pool’ means any investment trust, syndicate, or
19 similar form of enterprise operated for the pur-
20 pose of trading in commodity interests, includ-
21 ing any—

22 “(i) commodity for future delivery, se-
23 curity futures product, or swap;

1 “(ii) agreement, contract, or trans-
2 action described in section 2(c)(2)(C)(i) or
3 section 2(c)(2)(D)(i);

4 “(iii) commodity option authorized
5 under section 4c; or

6 “(iv) leverage transaction authorized
7 under section 19.

8 “(B) FURTHER DEFINITION.—The Com-
9 mission, by rule or regulation, may include
10 within, or exclude from, the term ‘commodity
11 pool’ any investment trust, syndicate, or similar
12 form of enterprise if the Commission deter-
13 mines that the rule or regulation will effectuate
14 the purposes of this Act.”;

15 (6) by striking paragraph (12) (as redesignated
16 by paragraph (1)) and inserting the following:

17 “(12) COMMODITY POOL OPERATOR.—

18 “(A) IN GENERAL.—The term ‘commodity
19 pool operator’ means any person—

20 “(i) engaged in a business that is of
21 the nature of a commodity pool, invest-
22 ment trust, syndicate, or similar form of
23 enterprise, and who, in connection there-
24 with, solicits, accepts, or receives from oth-
25 ers, funds, securities, or property, either

1 directly or through capital contributions,
2 the sale of stock or other forms of securi-
3 ties, or otherwise, for the purpose of trad-
4 ing in commodity interest, including any—

5 “(I) commodity for future deliv-
6 ery, security futures product, or swap;

7 “(II) agreement, contract, or
8 transaction described in section
9 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

10 “(III) commodity option author-
11 ized under section 4c; or

12 “(IV) leverage transaction au-
13 thorized under section 19; or

14 “(ii) who is registered with the Com-
15 mission as a commodity pool operator.

16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘commodity
19 pool operator’ any person engaged in a business
20 that is of the nature of a commodity pool, in-
21 vestment trust, syndicate, or similar form of en-
22 terprise if the Commission determines that the
23 rule or regulation will effectuate the purposes of
24 this Act.”;

1 (7) in paragraph (13) (as redesignated by para-
2 graph (1)), in subparagraph (A)—

3 (A) in clause (i)—

4 (i) in subclause (I), by striking “made
5 or to be made on or subject to the rules of
6 a contract market or derivatives trans-
7 action execution facility” and inserting “,
8 security futures product, or swap”;

9 (ii) by redesignating subclauses (II)
10 and (III) as subclauses (III) and (IV);

11 (iii) by inserting after subclause (I)
12 the following:

13 “(II) any agreement, contract, or
14 transaction described in section
15 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;

16 and

17 (iv) in subclause (IV) (as so redesign-
18 ated), by striking “or” ;

19 (B) in clause (ii), by striking the period at
20 the end and inserting a semicolon; and

21 (C) by adding at the end the following:

22 “(iii) is registered with the Commis-
23 sion as a commodity trading advisor; or

24 “(iv) the Commission, by rule or regu-
25 lation, may include if the Commission de-

1 termines that the rule or regulation will ef-
2 fectuate the purposes of this Act.”;

3 (8) in paragraph (18) (as redesignated by para-
4 graph (1)), in subparagraph (A), in the matter pre-
5 ceding clause (i), by striking “paragraph (12)(A)”
6 and inserting “paragraph (19)(A)”;

7 (9) in paragraph (19) (as redesignated by para-
8 graph (1))—

9 (A) in subparagraph (A)—

10 (i) in the matter following clause
11 (vii)(III)—

12 (I) by striking “section 1a
13 (11)(A)” and inserting “paragraph
14 (18)(A)”;

15 (II) by striking “\$25,000,000”
16 and inserting “\$50,000,000”; and

17 (ii) in clause (xi), in the matter pre-
18 ceding subclause (I), by striking “total as-
19 sets in an amount” and inserting
20 “amounts invested on a discretionary
21 basis, the aggregate of which is”;

22 (10) by striking paragraph (23) (as redesi-
23 gnated by paragraph (1)) and inserting the following:

24 “(23) FLOOR BROKER.—

1 “(A) IN GENERAL.—The term ‘floor
2 broker’ means any person—

3 “(i) who, in or surrounding any pit,
4 ring, post, or other place provided by a
5 contract market for the meeting of persons
6 similarly engaged, shall purchase or sell for
7 any other person—

8 “(I) any commodity for future
9 delivery, security futures product, or
10 swap; or

11 “(II) any commodity option au-
12 thORIZED under section 4c; or

13 “(ii) who is registered with the Com-
14 mission as a floor broker.

15 “(B) FURTHER DEFINITION.—The Com-
16 mission, by rule or regulation, may include
17 within, or exclude from, the term ‘floor broker’
18 any person in or surrounding any pit, ring,
19 post, or other place provided by a contract mar-
20 ket for the meeting of persons similarly engaged
21 who trades for any other person if the Commis-
22 sion determines that the rule or regulation will
23 effectuate the purposes of this Act.”;

24 (11) by striking paragraph (24) (as redesign-
25 nated by paragraph (1)) and inserting the following:

1 “(24) FLOOR TRADER.—

2 “(A) IN GENERAL.—The term ‘floor trad-
3 er’ means any person—

4 “(i) who, in or surrounding any pit,
5 ring, post, or other place provided by a
6 contract market for the meeting of persons
7 similarly engaged, purchases, or sells solely
8 for such person’s own account—

9 “(I) any commodity for future
10 delivery, security futures product, or
11 swap; or

12 “(II) any commodity option au-
13 thorized under section 4c; or

14 “(ii) who is registered with the Com-
15 mission as a floor trader.

16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘floor trader’
19 any person in or surrounding any pit, ring,
20 post, or other place provided by a contract mar-
21 ket for the meeting of persons similarly engaged
22 who trades solely for such person’s own account
23 if the Commission determines that the rule or
24 regulation will effectuate the purposes of this
25 Act.”;

1 (12) by inserting after paragraph (24) (as re-
2 designated by paragraph (1)) the following:

3 “(25) FOREIGN EXCHANGE FORWARD.—The
4 term ‘foreign exchange forward’ means a transaction
5 that—

6 “(A) solely involves the exchange of 2 dif-
7 ferent currencies on a specific future date at a
8 fixed rate agreed upon on the inception of the
9 contract covering the exchange; and

10 “(B) is physically settled.

11 “(26) FOREIGN EXCHANGE SWAP.—The term
12 ‘foreign exchange swap’ means a transaction that
13 solely involves—

14 “(A) an exchange of 2 different currencies
15 on a specific date at a fixed rate that is agreed
16 upon on the inception of the contract covering
17 the exchange; and

18 “(B) a reverse exchange of the 2 cur-
19 rencies described in subparagraph (A) at a later
20 date and at a fixed rate that is agreed upon on
21 the inception of the contract covering the ex-
22 change.”;

23 (13) by striking paragraph (29) (as redesign-
24 nated by paragraph (1)) and inserting the following:

25 “(29) FUTURES COMMISSION MERCHANT.—

1 “(A) IN GENERAL.—The term ‘futures
2 commission merchant’ means an individual, as-
3 sociation, partnership, corporation, or trust—

4 “(i) that—

5 “(I) is engaged in soliciting or in
6 accepting orders for, or acting as a
7 counterparty in—

8 “(aa) the purchase or sale of
9 a commodity for future delivery;

10 “(bb) a security futures
11 product;

12 “(cc) a swap;

13 “(dd) any agreement, con-
14 tract, or transaction described in
15 section 2(c)(2)(C)(i) or section
16 2(c)(2)(D)(i);

17 “(ee) any commodity option
18 authorized under section 4c; or

19 “(ff) any leverage trans-
20 action authorized under section
21 19; and

22 “(II) in or in connection with the
23 activities described in subclause (I),
24 accepts any money, securities, or
25 property (or extends credit in lieu

1 thereof) to margin, guarantee, or se-
2 cure any trades or contracts that re-
3 sult or may result therefrom; or

4 “(ii) that is registered with the Com-
5 mission as a futures commission merchant.

6 “(B) FURTHER DEFINITION.—The Com-
7 mission, by rule or regulation, may include
8 within, or exclude from, the term ‘futures com-
9 mission merchant’ any person who engages in
10 soliciting or accepting orders for, or acting as
11 a counterparty in, any agreement, contract, or
12 transaction subject to this Act, and who accepts
13 any money, securities, or property (or extends
14 credit in lieu thereof) to margin, guarantee, or
15 secure any trades or contracts that result or
16 may result therefrom, if the Commission deter-
17 mines that the rule or regulation will effectuate
18 the purposes of this Act.

19 “(C) EXCLUSION.—The term ‘futures com-
20 mission merchant’ does not include a person
21 who acts only as a counterparty for swaps with
22 eligible contract participants and who does not
23 otherwise engage in the activities of a futures
24 commission merchant.”;

1 “(dd) any leverage trans-
2 action authorized under section
3 19; and

4 “(II) does not accept any money,
5 securities, or property (or extend cred-
6 it in lieu thereof) to margin, guar-
7 antee, or secure any trades or con-
8 tracts that result or may result there-
9 from; or

10 “(ii) who is registered with the Com-
11 mission as an introducing broker.

12 “(B) FURTHER DEFINITION.—The Com-
13 mission, by rule or regulation, may include
14 within, or exclude from, the term ‘introducing
15 broker’ any person who engages in soliciting or
16 accepting orders for any agreement, contract,
17 or transaction subject to this Act, and who does
18 not accept any money, securities, or property
19 (or extend credit in lieu thereof) to margin,
20 guarantee, or secure any trades or contracts
21 that result or may result therefrom, if the Com-
22 mission determines that the rule or regulation
23 will effectuate the purposes of this Act.”;

24 (16) by inserting after paragraph (32) (as re-
25 designated by paragraph (1)) the following:

1 “(33) MAJOR SECURITY-BASED SWAP PARTICI-
2 PANT.—The term ‘major security-based swap partici-
3 pant’ has the meaning given the term in section
4 3(a) of the Securities Exchange Act of 1934 (15
5 U.S.C. 78c(a)).

6 “(34) MAJOR SWAP PARTICIPANT.—

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

10 “(i) maintains a substantial position
11 in swaps for any of the major swap cat-
12 egories as determined by the Commission
13 (excluding positions held for hedging or
14 mitigating commercial risk); or

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

20 “(iii)(I) is a financial entity that is
21 highly leveraged relative to the amount of
22 capital it holds; and

23 “(II) maintains a substantial position
24 in outstanding swaps in any major swap
25 category as determined by the Commission.

1 (B) by redesignating subparagraphs (C),
2 (D), and (E) as subparagraphs (B), (C), and
3 (F), respectively;

4 (C) in subparagraph (C) (as so redesign-
5 nated), by striking “and”;

6 (D) by inserting after subparagraph (C)
7 (as so redesignated) the following:

8 “(D) a swap execution facility registered
9 under section 5h;

10 “(E) a swap data repository; and”;

11 (19) by inserting after paragraph (42) (as re-
12 designated by paragraph (1)) the following:

13 “(43) SECURITY-BASED SWAP.—The term ‘se-
14 curity-based swap’ has the meaning given the term
15 in section 3(a) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78c(a)).

17 “(44) SECURITY-BASED SWAP DEALER.—The
18 term ‘security-based swap dealer’ has the meaning
19 given the term in section 3(a) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78c(a)).”;

21 (20) in paragraph (47) (as redesignated by
22 paragraph (1)), by striking “subject to section
23 2(h)(7)” and inserting “subject to section 2(h)(5)”;

24 (21) by inserting after paragraph (47) (as re-
25 designated by paragraph (1)) the following:

1 “(48) SWAP.—

2 “(A) IN GENERAL.—The term ‘swap’
3 means any agreement, contract, or trans-
4 action—

5 “(i) that is a put, call, cap, floor, col-
6 lar, or similar option of any kind that is
7 for the purchase or sale, or based on the
8 value, of 1 or more interest or other rates,
9 currencies, commodities, securities, instru-
10 ments of indebtedness, indices, quantitative
11 measures, or other financial or economic
12 interests or property of any kind;

13 “(ii) that provides for any purchase,
14 sale, payment, or delivery (other than a
15 dividend on an equity security) that is de-
16 pendent on the occurrence, nonoccurrence,
17 or the extent of the occurrence of an event
18 or contingency associated with a potential
19 financial, economic, or commercial con-
20 sequence;

21 “(iii) that provides on an executory
22 basis for the exchange, on a fixed or con-
23 tingent basis, of 1 or more payments based
24 on the value or level of 1 or more interest
25 or other rates, currencies, commodities, se-

1 curities, instruments of indebtedness, indi-
2 ces, quantitative measures, or other finan-
3 cial or economic interests or property of
4 any kind, or any interest therein or based
5 on the value thereof, and that transfers, as
6 between the parties to the transaction, in
7 whole or in part, the financial risk associ-
8 ated with a future change in any such
9 value or level without also conveying a cur-
10 rent or future direct or indirect ownership
11 interest in an asset (including any enter-
12 prise or investment pool) or liability that
13 incorporates the financial risk so trans-
14 ferred, including any agreement, contract,
15 or transaction commonly known as—

- 16 “(I) an interest rate swap;
17 “(II) a rate floor;
18 “(III) a rate cap;
19 “(IV) a rate collar;
20 “(V) a cross-currency rate swap;
21 “(VI) a basis swap;
22 “(VII) a currency swap;
23 “(VIII) a foreign exchange swap;
24 “(IX) a total return swap;

1 “(X) a broad-based security
2 index swap;
3 “(XI) an equity index swap;
4 “(XII) an equity swap;
5 “(XIII) a debt index swap;
6 “(XIV) a debt swap;
7 “(XV) a credit spread;
8 “(XVI) a credit default swap;
9 “(XVII) a credit swap;
10 “(XVIII) a weather swap;
11 “(XIX) an energy swap;
12 “(XX) a metal swap;
13 “(XXI) an agricultural swap;
14 “(XXII) an emissions swap; and
15 “(XXIII) a commodity swap;
16 “(iv) that is an agreement, contract,
17 or transaction that is, or in the future be-
18 comes, a swap;
19 “(v) that meets the definition of the
20 term ‘swap agreement’ (as defined in sec-
21 tion 206A of the Gramm-Leach-Bliley Act
22 (15 U.S.C. 78c note; Public Law 106–102)
23 of which a material term of which is based
24 on the price, yield, value, or volatility of

1 any security or any group or index of secu-
2 rities, or any interest therein; or

3 “(vi) that is any combination or per-
4 mutation of, or option on, any agreement,
5 contract, or transaction described in
6 clauses (i) through (iv).

7 “(B) EXCLUSIONS.—The term ‘swap’ does
8 not include—

9 “(i) any contract of sale of a com-
10 modity for future delivery, option on a fu-
11 ture, leverage contract, retail commodity
12 transaction (including a retail foreign ex-
13 change transaction), or security futures
14 product;

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

19 “(iii) any put, call, straddle, option, or
20 privilege on any security, certificate of de-
21 posit, or group or narrow-based index of
22 securities, including any interest therein or
23 based on the value thereof, that is subject
24 to—

1 seq.) and the Securities Exchange Act of
2 1934 (15 U.S.C. 78a et seq.), unless the
3 agreement, contract, or transaction predi-
4 cates the purchase or sale on the occur-
5 rence of a bona fide contingency that
6 might reasonably be expected to affect or
7 be affected by the creditworthiness of a
8 party other than a party to the agreement,
9 contract, or transaction;

10 “(vii) any note, bond, or evidence of
11 indebtedness that is a security, as defined
12 in section 2(a) of the Securities Act of
13 1933 (15 U.S.C. 77b(a));

14 “(viii) any agreement, contract, or
15 transaction that is—

16 “(I) based on a security; and

17 “(II) entered into directly or
18 through an underwriter (as defined in
19 section 2(a) of the Securities Act of
20 1933 (15 U.S.C. 77b(a))) by the
21 issuer of such security for the pur-
22 poses of raising capital, unless the
23 agreement, contract, or transaction is
24 entered into to manage a risk associ-
25 ated with capital raising;

1 “(ix) any agreement, contract, or
2 transaction a counterparty of which is a
3 Federal Reserve bank, the Federal Govern-
4 ment, or a Federal agency that is expressly
5 backed by the full faith and credit of the
6 United States; and

7 “(x) any security-based swap.

8 “(C) RULE OF CONSTRUCTION REGARDING
9 MASTER AGREEMENTS.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii), the term ‘swap’ in-
12 cludes a master agreement that provides
13 for an agreement, contract, or transaction
14 that is a swap under subparagraph (A), to-
15 gether with each supplement to any master
16 agreement, without regard to whether the
17 master agreement contains an agreement,
18 contract, or transaction that is not a swap
19 pursuant to subparagraph (A).

20 “(ii) EXCEPTION.—For purposes of
21 clause (i), the master agreement shall be
22 considered to be a swap only with respect
23 to each agreement, contract, or transaction
24 covered by the master agreement that is a
25 swap pursuant to subparagraph (A).

1 “(D) MIXED SWAPS.—Notwithstanding
2 subparagraph (B)(x), an agreement, contract,
3 or transaction that contains elements described
4 in subparagraph (A) and elements of a security-
5 based swap described in subparagraphs (A)
6 through (C) of section 3(a)(68) of the Securi-
7 ties Exchange Act of 1934 (15 U.S.C.
8 78c(a)(68)) shall be considered to be a swap,
9 unless the elements described in subparagraph
10 (A) are de minimis, as determined by the Com-
11 mission by rule, regulation, or order in con-
12 sultation with the Securities and Exchange
13 Commission.

14 “(49) SWAP DATA REPOSITORY.—The term
15 ‘swap data repository’ means any person that col-
16 lects, calculates, prepares, or maintains information
17 or records with respect to transactions or positions
18 in, or the terms and conditions of, swaps entered
19 into by third parties.

20 “(50) SWAP DEALER.—

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

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

25 “(ii) makes a market in swaps;

1 “(iii) regularly engages in the pur-
2 chase and sale of swaps in the ordinary
3 course of business;

4 “(iv) regularly accepts either side of
5 swaps transaction in the ordinary course of
6 business; or

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

11 “(B) INCLUSION.—A person may be des-
12 ignated as a swap dealer for a single type or
13 single class or category of swap and considered
14 not to be a swap dealer for other types, classes,
15 or categories of swaps.

16 “(51) SWAP EXECUTION FACILITY.—The term
17 ‘swap execution facility’ means a trading facility in
18 which multiple participants have the ability to exe-
19 cute or trade swaps by accepting bids and offers
20 made by other participants that are open to multiple
21 participants in the facility or system, or confirma-
22 tion facility, that—

23 “(A) facilitates the execution of swaps be-
24 tween persons; and

1 “(B) is not a designated contract mar-
2 ket.”; and

3 (22) in paragraph (52) (as redesignated by
4 paragraph (1)), in subparagraph (A)(i), by striking
5 “partipants” and inserting “participants”.

6 (b) **AUTHORITY TO DEFINE TERMS.**—The Com-
7 modity Futures Trading Commission may adopt a rule to
8 define—

9 (1) the term “commercial risk”; and

10 (2) any other term included in an amendment
11 made by this Act.

12 (c) **MODIFICATION OF DEFINITIONS.**—To include
13 transactions and entities that have been structured to
14 evade this title (or an amendment made by this title), the
15 Commodity Futures Trading Commission shall adopt a
16 rule to further define the terms “swap”, “swap dealer”,
17 “major swap participant”, and “eligible contract partici-
18 pant”.

19 (d) **EXEMPTIONS.**—Section 4(c)(1) of the Commodity
20 Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking
21 “except that” and all that follows through the period at
22 the end and inserting the following: “except that—

23 “(A) unless the Commission is expressly
24 authorized by any provision described in this
25 subparagraph to grant exemptions, with respect

1 to amendments made by title I of the Wall
2 Street Transparency and Accountability Act of
3 2010—

4 “(i) with respect to—

5 “(I) paragraphs (2), (3), (4), (5),
6 and (8), clause (vii)(III) of paragraph
7 (18), paragraphs (24), (25), (32),
8 (33), (39), (40), (42), (43), (47),
9 (48), (49), and (50) of section 1a, and
10 sections 2(a)(13), 2(c)(D), 4a(a),
11 4a(b), 4d(e), 4d(d), 4r, 4s, 5b(a),
12 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i),
13 8e, and 21; and

14 “(II) section 206(e) of the
15 Gramm-Leach-Bliley Act (Public Law
16 106–102; 15 U.S.C. 78c note); and

17 “(ii) in subsection (c) of section 111
18 and section 132; and

19 “(B) the Commission and the Securities
20 and Exchange Commission may by rule, regula-
21 tion, or order jointly exclude any agreement,
22 contract, or transaction from section
23 2(a)(1)(D)) if the Commission determines that
24 the exemption would be consistent with the
25 public interest.”.

1 (e) CONFORMING AMENDMENTS.—

2 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
3 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
4 ed—

5 (A) in item (cc)—

6 (i) in subitem (AA), by striking “sec-
7 tion 1a(20)” and inserting “section 1a”;
8 and

9 (ii) in subitem (BB), by striking “sec-
10 tion 1a(20)” and inserting “section 1a”;
11 and

12 (B) in item (dd), by striking “section
13 1a(12)(A)(ii)” and inserting “section
14 1a(19)(A)(ii)”.

15 (2) Section 4m(3) of the Commodity Exchange
16 Act (7 U.S.C. 6m(3)) is amended by striking “sec-
17 tion 1a(6)” and inserting “section 1a”.

18 (3) Section 4q(a)(1) of the Commodity Ex-
19 change Act (7 U.S.C. 6o-1(a)(1)) is amended by
20 striking “section 1a(4)” and inserting “section
21 1a(10)”.

22 (4) Section 5(e)(1) of the Commodity Exchange
23 Act (7 U.S.C. 7(e)(1)) is amended by striking “sec-
24 tion 1a(4)” and inserting “section 1a(10)”.

1 (5) Section 5a(b)(2)(F) of the Commodity Ex-
2 change Act (7 U.S.C. 7a(b)(2)(F)) is amended by
3 striking “section 1a(4)” and inserting “section
4 1a(10)”.

5 (6) Section 5b(a) of the Commodity Exchange
6 Act (7 U.S.C. 7a-1(a)) is amended, in the matter
7 preceding paragraph (1), by striking “section 1a(9)”
8 and inserting “section 1a”.

9 (7) Section 5c(e)(2)(B) of the Commodity Ex-
10 change Act (7 U.S.C. 7a-2(c)(2)(B)) is amended by
11 striking “section 1a(4)” and inserting “section
12 1a(10)”.

13 (8) Section 6(g)(5)(B)(i) of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is
15 amended—

16 (A) in subclause (I), by striking “section
17 1a(12)(B)(ii)” and inserting “section
18 1a(19)(B)(ii)”; and

19 (B) in subclause (II), by striking “section
20 1a(12)” and inserting “section 1a(19)”.

21 (9) The Legal Certainty for Bank Products Act
22 of 2000 (7 U.S.C. 27 et seq.) is amended—

23 (A) in section 402—

1 (i) in subsection (a)(7), by striking
2 “section 1a(20)” and inserting “section
3 1a”;

4 (ii) in subsection (b)(2), by striking
5 “section 1a(12)” and inserting “section
6 1a”;

7 (iii) in subsection (c), by striking
8 “section 1a(4)” and inserting “section 1a”;
9 and

10 (iv) in subsection (d)—

11 (I) in the matter preceding para-
12 graph (1), by striking “section 1a(4)”
13 and inserting “section 1a(10)”;

14 (II) in paragraph (1)—

15 (aa) in subparagraph (A),
16 by striking “section 1a(12)” and
17 inserting “section 1a”; and

18 (bb) in subparagraph (B),
19 by striking “section 1a(33)” and
20 inserting “section 1a”;

21 (III) in paragraph (2)—

22 (aa) in subparagraph (A),
23 by striking “section 1a(10)” and
24 inserting “section 1a”;

1 (bb) in subparagraph (B),
2 by striking “section
3 1a(12)(B)(ii)” and inserting
4 “section 1a(19)(B)(ii”;
5 (cc) in subparagraph (C), by
6 striking “section 1a(12)” and in-
7 serting “section 1a(19)”;
8 (dd) in subparagraph (D),
9 by striking “section 1a(13)” and
10 inserting “section 1a”; and
11 (B) in section 404(1), by striking “section
12 1a(4)” and inserting “section 1a”.

13 **SEC. 112. JURISDICTION.**

14 (a) **EXCLUSIVE JURISDICTION.**—Section 2(a)(1)(A)
15 of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is
16 amended in the first sentence—

17 (1) by inserting “the Wall Street Transparency
18 and Accountability Act of 2010 (including an
19 amendment made by that Act) and” after “other-
20 wise provided in”;

21 (2) by striking “(c) through (i) of this section”
22 and inserting “(c) and (f)”;

23 (3) by striking “contracts of sale” and inserting
24 “swaps or contracts of sale”; and

1 (4) by striking “or derivatives transaction exe-
2 cution facility registered pursuant to section 5 or
3 5a” and inserting “pursuant to section 5”.

4 (b) REGULATION OF SWAPS UNDER FEDERAL AND
5 STATE LAW.—Section 12 of the Commodity Exchange Act
6 (7 U.S.C. 16) is amended by adding at the end the fol-
7 lowing:

8 “(h) REGULATION OF SWAPS AS INSURANCE UNDER
9 STATE LAW.—A swap—

10 “(1) shall not be considered to be insurance;
11 and

12 “(2) may not be regulated as an insurance con-
13 tract under the law of any State.

14 “(i) REGULATION OF SWAPS AS SECURITIES UNDER
15 FEDERAL AND STATE LAW.—A swap (other than a secu-
16 rity-based swap)—

17 “(1) shall not be considered to be a security;
18 and

19 “(2) may not be regulated as a security under
20 any other Federal or State law.”.

21 (c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
22 TRADED ON AN ORGANIZED EXCHANGE.—Section
23 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
24 2(c)(2)(A)) is amended—

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

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

2 and

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

4 “(ii) a swap; or”.

5 (d) **APPLICABILITY.**—Section 2 of the Commodity
6 Exchange Act (7 U.S.C. 2) (as amended by section
7 113(a)(3)) is amended by adding at the end the following:

8 “(i) **APPLICABILITY.**—The provisions of this Act re-
9 lating to swaps that were enacted by the Wall Street
10 Transparency and Accountability Act of 2010 (including
11 any rule prescribed or regulation promulgated under that
12 Act), shall not apply to activities outside the United States
13 unless those activities—

14 “(1) have a direct and significant connection
15 with activities in, or effect on, commerce of the
16 United States; or

17 “(2) contravene such rules or regulations as the
18 Commission may prescribe or promulgate as are nec-
19 essary or appropriate to prevent the evasion of any
20 provision of this Act that was enacted by the Wall
21 Street Transparency and Accountability Act of
22 2010.”.

23 **SEC. 113. CLEARING.**

24 (a) **CLEARING REQUIREMENT.**—

1 (1) IN GENERAL.—Section 2 of the Commodity
2 Exchange Act (7 U.S.C. 2) is amended—

3 (A) by striking subsections (d), (e), (g),
4 and (h); and

5 (B) by redesignating subsection (i) as sub-
6 section (g).

7 (2) SWAPS; LIMITATION ON PARTICIPATION.—
8 Section 2 of the Commodity Exchange Act (7 U.S.C.
9 2) (as amended by paragraph (1)) is amended by in-
10 sserting after subsection (c) the following:

11 “(d) SWAPS.—Nothing in this Act (other than sub-
12 paragraphs (A) and (B) of subsection (a)(1), subsections
13 (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c),
14 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section
15 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o,
16 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and
17 (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections
18 (e)(2) and (f) of section 12, subsections (a) and (b) of
19 section 13, sections 17, 20, 21, and 22(a)(4), and any
20 other provision of this Act that is applicable to registered
21 entities and Commission registrants) governs or applies to
22 a swap.

23 “(e) LIMITATION ON PARTICIPATION.—It shall be
24 unlawful for any person, other than an eligible contract
25 participant, to enter into a swap unless the swap is en-

1 tered into on, or subject to the rules of, a board of trade
2 designated as a contract market under section 5.”.

3 (3) MANDATORY CLEARING OF SWAPS.—Section
4 2 of the Commodity Exchange Act (7 U.S.C. 2) is
5 amended by inserting after subsection (g) (as reded-
6 igned by paragraph (1)(B)) the following:

7 “(h) CLEARING REQUIREMENT.—

8 “(1) OPEN ACCESS.—The rules of a registered
9 derivatives clearing organization shall—

10 “(A) prescribe that all swaps with the
11 same terms and conditions are economically
12 equivalent and may be offset with each other
13 within the derivatives clearing organization; and

14 “(B) provide for nondiscriminatory clear-
15 ing of a swap executed bilaterally or on or
16 through the rules of an unaffiliated designated
17 contract market or swap execution facility.

18 “(2) SWAPS SUBJECT TO MANDATORY CLEAR-
19 ING REQUIREMENT.—

20 “(A) IN GENERAL.—In accordance with
21 subparagraph (C), the Commission shall, con-
22 sistent with the public interest, adopt rules
23 under the expedited process described in sub-
24 paragraph (B) to establish criteria for deter-

1 mining that a swap, or any group, category,
2 type, or class of swap is required to be cleared.

3 “(B) EXPEDITED RULEMAKING AUTHOR-
4 ITY.—

5 “(i) PROCEDURE.—The promulgation
6 of regulations under subparagraph (A) and
7 issuance of orders under subparagraph
8 (F)(ii)(II)(aa) may be made without re-
9 gard to—

10 “(I) the notice and comment pro-
11 visions of section 553 of title 5,
12 United States Code; and

13 “(II) chapter 35 of title 44,
14 United States Code (commonly known
15 as the ‘Paperwork Reduction Act’).

16 “(ii) AGENCY RULEMAKING.—In car-
17 rying out subparagraph (A), and in issuing
18 orders under subparagraph (F)(ii)(II)(aa),
19 the Commission shall use the authority
20 provided under section 808 of title 5,
21 United States Code.

22 “(C) FACTORS.—In carrying out subpara-
23 graph (A), the Commission may consider—

24 “(i) the volume and open interest of
25 transactions;

1 “(ii) as compared to other agree-
2 ments, contracts, or transactions that are
3 centrally cleared, whether any material dif-
4 ferences exist;

5 “(iii) the impact on the mitigation of
6 systemic risk, taking into account the size
7 of the contract; or

8 “(iv) any other factor that the Com-
9 mission determines to be appropriate.

10 “(D) COMMISSION REVIEW OF NEW
11 SWAPS.—The Commission—

12 “(i) shall review each swap, or any
13 group, category, type, or class of swap for
14 which a derivatives clearing organization
15 notifies the Commission that the deriva-
16 tives clearing organization plans to list for
17 clearing after the date of enactment of this
18 subsection (‘new swap’);

19 “(ii) may review any swap, or any
20 group, category, type, or class of swap
21 that—

22 “(I) is not currently listed or pro-
23 posed by a derivatives clearing organi-
24 zation; and

1 “(II) the Commission determines
2 to be appropriate for review;

3 “(iii) shall determine by order whether
4 the new swap, or group, category, type, or
5 class of swaps being listed for clearing is
6 required to be cleared based on the criteria
7 established in the rule adopted by the
8 Commission under subparagraph (A);

9 “(iv) shall provide a public comment
10 period regarding the determination of the
11 Commission as to whether the clearing re-
12 quirements shall apply to the new swap or
13 group, category, type, or class of swaps
14 that are listed for clearing; and

15 “(v) not later than 90 days after the
16 date on which a derivatives clearing orga-
17 nization certifies to the Commission that
18 the derivatives clearing organization will
19 list, or receives approval from the Commis-
20 sion to list, the new swap, or group, cat-
21 egory, type, or class of swaps for clearing,
22 shall make a determination under clause
23 (iii).

24 “(E) EFFECT.—Nothing in subparagraph
25 (D) affects the ability of the derivatives clearing

1 organization described in that subparagraph to
2 list for permissive clearing any swap, or group,
3 category, type, or class of swaps.

4 “(F) MANDATORY CLEARING.—

5 “(i) IN GENERAL.—Except as pro-
6 vided in paragraph (3), it shall be unlawful
7 to enter into a swap that is required to be
8 cleared unless such swap shall be sub-
9 mitted for clearing.

10 “(ii) REQUIREMENTS.—The swap
11 shall be submitted for clearing if—

12 “(I) the swap meets the criteria
13 of the rules adopted by the Commis-
14 sion pursuant to subparagraph (A);

15 “(II) the Commission determines
16 by order that—

17 “(aa) an existing swap or
18 group, category, type, or class of
19 swaps listed for clearing by a de-
20 rivatives clearing organization as
21 of the date of enactment of this
22 subparagraph is required to be
23 cleared; or

24 “(bb) a new swap or group,
25 category, type, or class of swaps

1 submitted under subparagraph
2 (D) is required to be cleared; and
3 “(III) the swap is listed for clear-
4 ing by a registered derivatives clearing
5 organization.

6 “(G) PREVENTION OF EVASION.—

7 “(i) IN GENERAL.—The Commission
8 may prescribe rules under this subsection
9 (and issue interpretations of rules pre-
10 scribed under this subsection) as deter-
11 mined by the Commission to be necessary
12 to prevent evasions of the mandatory clear-
13 ing requirements under this Act.

14 “(ii) DUTY OF COMMISSION TO INVES-
15 TIGATE AND TAKE CERTAIN ACTIONS.—To
16 the extent the Commission finds that a
17 particular swap, group, category, type, or
18 class of swaps would otherwise be subject
19 to mandatory clearing but no derivatives
20 clearing organization has listed the swap,
21 group, category, type, or class of swaps for
22 clearing, the Commission shall—

23 “(I) investigate the facts and cir-
24 cumstances surrounding the situation;
25 and

1 “(II) issue a public report re-
2 garding the swap in question and take
3 such actions as the Commission deter-
4 mines to be necessary and in the pub-
5 lic interest.

6 “(H) STAY OF CLEARING REQUIRE-
7 MENT.—

8 “(i) IN GENERAL.—The Commission
9 may, on its own initiative or upon applica-
10 tion of a counterparty to a swap, stay the
11 mandatory clearing requirement described
12 in subparagraph (F) until the date on
13 which the Commission completes a review
14 of—

15 “(I) the terms of the swap or the
16 group, category, type, or class of
17 swaps; and

18 “(II) the clearing arrangement.

19 “(ii) DEADLINE.—Not later than 30
20 days after the date on which the Commis-
21 sion issues a stay under clause (i), the
22 Commission shall make a determination in
23 accordance with clause (iii).

1 “(iii) DETERMINATION.—Upon com-
2 pletion of the review carried out under
3 clause (i), the Commission may—

4 “(I) determine, unconditionally
5 or subject to such terms and condi-
6 tions as the Commission determines to
7 be appropriate, that the swap, or
8 group, category, type, or class of
9 swaps, must be cleared pursuant to
10 this subsection; or

11 “(II) determine that the clearing
12 mandate described in subparagraph
13 (F) shall not apply to the swap,
14 group, category, type, or class of
15 swaps.

16 “(3) END USER CLEARING EXEMPTION.—

17 “(A) DEFINITION OF COMMERCIAL END
18 USER.—In this paragraph, the term ‘commer-
19 cial end user’ means any person (not including
20 financial services or any other financial entity)
21 who, as its primary business activity owns,
22 uses, produces, processes, manufacturers, dis-
23 tributes, merchandises, or markets services or
24 commodities (which shall include coal, natural
25 gas, electricity, ethanol, crude oil, distillates,

1 and other hydrocarbons) either individually or
2 in a fiduciary capacity.

3 “(B) END USER CLEARING EXEMPTION.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii), in the event that a swap is subject to
6 the mandatory clearing requirement under
7 paragraph (2), and 1 of the counterparties
8 to the swap is a commercial end user, that
9 counterparty—

10 “(I)(aa) may elect not to clear
11 the swap, as required under para-
12 graph (2); or

13 “(bb) may elect to require clear-
14 ing of the swap; and

15 “(II) if the end user makes an
16 election under subclause (I)(bb), shall
17 have the sole right to select the de-
18 rivatives clearing organization at
19 which the swap will be cleared.

20 “(ii) LIMITATION.—A commercial end
21 user may only make an election under
22 clause (i) if the end user is using the swap
23 to hedge commercial risk.

24 “(C) TREATMENT OF AFFILIATES.—

1 “(i) IN GENERAL.—An affiliate of a
2 commercial end user may make an election
3 under subparagraph (B)(i) only if the affil-
4 iate uses the swap to hedge or mitigate the
5 commercial risk of the commercial end
6 user parent or other affiliates of the com-
7 mercial end user.

8 “(ii) PROHIBITION RELATING TO CER-
9 TAIN AFFILIATES.—An affiliate of a com-
10 mercial end user shall not use the exemp-
11 tion under subparagraph (B) if the affil-
12 iate is—

13 “(I) a swap dealer;

14 “(II) a security-based swap deal-
15 er;

16 “(III) a major swap participant;

17 “(IV) a major security-based
18 swap participant;

19 “(V) an issuer that would be an
20 investment company, as defined in
21 section 3 of the Investment Company
22 Act of 1940 (15 U.S.C. 80a-3), but
23 for paragraph (1) or (7) of subsection
24 (c) of that Act (15 U.S.C. 80a-3(c));

25 “(VI) a commodity pool;

1 “(VII) a bank holding company
2 with over \$50,000,000,000 in consoli-
3 dated assets; or

4 “(VIII) an affiliate of any entity
5 described in subclauses (I) through
6 (VII).

7 “(D) ABUSE OF EXEMPTION.—The Com-
8 mission may prescribe such rules, or issue inter-
9 pretations of the rules, as the Commission de-
10 termines to be necessary to prevent abuse of the
11 exemption described in subparagraph (B).

12 “(E) OPTION TO CLEAR.—With respect to
13 any swap listed for clearing by a derivatives
14 clearing organization and entered into by a
15 swap dealer or a major swap participant with
16 any other counterparty, the counterparty—

17 “(i) may elect to require clearing of
18 the swap; and

19 “(ii) if the counterparty makes an
20 election under clause (i), shall have the
21 sole right to select the derivatives clearing
22 organization at which the swap will be
23 cleared.”.

1 (b) COMMODITY EXCHANGE ACT.—Section 2 of the
2 Commodity Exchange Act (7 U.S.C. 2) is amended by
3 adding at the end the following:

4 “(j) AUDIT COMMITTEE APPROVAL.—Exemptions
5 from the requirements of subsection (h)(2)(F) to clear a
6 swap and subsection (b) to trade a swap through a board
7 of trade or swap execution facility shall be available to
8 a counterparty that is an issuer of securities that are reg-
9 istered under section 12 of the Securities Exchange Act
10 of 1934 (15 U.S.C. 78l) or that is required to file reports
11 pursuant to section 15(d) of the Securities Exchange Act
12 of 1934 (15 U.S.C. 78o) only if the issuer’s audit com-
13 mittee has reviewed and approved its decision to enter into
14 swaps that are subject to such exemptions.”.

15 (c) GRANDFATHER PROVISIONS.—

16 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-
17 ACTIONS IN EXEMPT COMMODITIES.—Not later than
18 60 days after the date of enactment of this Act, a
19 person may submit to the Commodity Futures Trad-
20 ing Commission a petition to remain subject to sec-
21 tion 2(h) of the Commodity Exchange Act (7 U.S.C.
22 2(h)) (as in effect on the day before the date of en-
23 actment of this Act).

1 (2) CONSIDERATION; AUTHORITY OF COM-
2 MODITY FUTURES TRADING COMMISSION.—The
3 Commodity Futures Trading Commission—

4 (A) shall consider any petition submitted
5 under subparagraph (A) in a prompt manner;
6 and

7 (B) may allow a person to continue oper-
8 ating subject to section 2(h) of the Commodity
9 Exchange Act (7 U.S.C. 2(h)) (as in effect on
10 the day before the date of enactment of this
11 Act) for not longer than a 1-year period.

12 (d) MANDATORY EXCHANGE TRADING.—

13 (1) REQUIREMENT.—A swap that is subject to
14 the mandatory clearing requirement of section
15 2(h)(2)(F) of the Commodity Exchange Act (7
16 U.S.C. 2(h)(2)(F)) shall not be traded except on or
17 through a board of trade designated as a contract
18 market under section 5 of that Act (7 U.S.C. 7), or
19 on or through a swap execution facility registered
20 under section 5h of that Act (as added by section
21 122), that makes the swap available for trading.

22 (2) EXCEPTION.—The requirement of para-
23 graph (1) shall not apply to a swap—

1 (A) if no designated contract market or
2 swap execution facility makes the swap avail-
3 able for trading; or

4 (B) involving a commercial end user who
5 opts to use the exemption under section
6 2(h)(3).

7 (3) AGRICULTURAL SWAPS.—

8 (A) IN GENERAL.—Except as provided in
9 paragraph (2), no person shall offer to enter
10 into, enter into, or confirm the execution of,
11 any swap in an agricultural commodity (as de-
12 fined by the Commodity Futures Trading Com-
13 mission).

14 (B) EXCEPTION.—Notwithstanding para-
15 graph (1), a person may offer to enter into,
16 enter into, or confirm the execution of, any
17 swap in an agricultural commodity pursuant to
18 section 4(c) of the Commodity Exchange Act (7
19 U.S.C. 6(c)) or any rule, regulation, or order
20 issued thereunder (including any rule, regula-
21 tion, or order in effect as of the date of enact-
22 ment of this Act) by the Commodity Futures
23 Trading Commission to allow swaps under such
24 terms and conditions as the Commission shall
25 prescribe.

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

8 **SEC. 114. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-**
9 **MENT.**

10 (a) **SEGREGATION REQUIREMENTS FOR CLEARED**
11 **SWAPS.**—Section 4d of the Commodity Exchange Act (7
12 U.S.C. 6d) (as amended by section 121) is amended by
13 adding at the end the following:

14 “(f) **SWAPS.**—

15 “(1) **REGISTRATION REQUIREMENT.**—It shall
16 be unlawful for any person to accept any money, se-
17 curities, or property (or to extend any credit in lieu
18 of money, securities, or property) from, for, or on
19 behalf of a swaps customer or to margin, guarantee,
20 or secure a swap cleared by or through a derivatives
21 clearing organization (including money, securities, or
22 property accruing to the customer as the result of
23 such a swap), unless the person shall have registered
24 under this Act with the Commission as a futures

1 commission merchant, and the registration shall not
2 have expired nor been suspended nor revoked.

3 “(2) CLEARED SWAPS.—

4 “(A) SEGREGATION REQUIRED.—A futures
5 commission merchant shall treat and deal with
6 all money, securities, and property of any swaps
7 customer received to margin, guarantee, or se-
8 cure a swap cleared by or through a derivatives
9 clearing organization (including money, securi-
10 ties, or property accruing to the swaps cus-
11 tomer as the result of such a swap) as belong-
12 ing to the swaps customer.

13 “(B) COMMINGLING PROHIBITED.—Money,
14 securities, and property of a swaps customer
15 described in subparagraph (A) shall be sepa-
16 rately accounted for and shall not be commin-
17 gled with the funds of the futures commission
18 merchant or be used to margin, secure, or guar-
19 antee any trades or contracts of any swaps cus-
20 tomer or person other than the person for
21 whom the same are held.

22 “(3) EXCEPTIONS.—

23 “(A) USE OF FUNDS.—

24 “(i) IN GENERAL.—Notwithstanding
25 paragraph (2), money, securities, and

1 property of a swaps customer of a futures
2 commission merchant described in para-
3 graph (2) may, for convenience, be com-
4 mingled and deposited in the same 1 or
5 more accounts with any bank or trust com-
6 pany or with a derivatives clearing organi-
7 zation.

8 “(ii) WITHDRAWAL.—Notwithstanding
9 paragraph (2), such share of the money,
10 securities, and property described in clause
11 (i) as in the normal course of business
12 shall be necessary to margin, guarantee,
13 secure, transfer, adjust, or settle a cleared
14 swap with a derivatives clearing organiza-
15 tion, or with any member of the derivatives
16 clearing organization, may be withdrawn
17 and applied to such purposes, including the
18 payment of commissions, brokerage, inter-
19 est, taxes, storage, and other charges, law-
20 fully accruing in connection with the
21 cleared swap.

22 “(B) COMMISSION ACTION.—Notwith-
23 standing paragraph (2), in accordance with
24 such terms and conditions as the Commission
25 may prescribe by rule, regulation, or order, any

1 money, securities, or property of the swaps cus-
2 tomer of a futures commission merchant de-
3 scribed in paragraph (2) may be commingled
4 and deposited as provided in this section with
5 any other money, securities, or property re-
6 ceived by the futures commission merchant and
7 required by the Commission to be separately ac-
8 counted for and treated and dealt with as be-
9 longing to the swaps customer of the futures
10 commission merchant.

11 “(4) PERMITTED INVESTMENTS.—Money de-
12 scribed in paragraph (2) may be invested in obliga-
13 tions of the United States, in general obligations of
14 any State or of any political subdivision of a State,
15 and in obligations fully guaranteed as to principal
16 and interest by the United States, or in any other
17 investment that the Commission may by rule or reg-
18 ulation prescribe, and such investments shall be
19 made in accordance with such rules and regulations
20 and subject to such conditions as the Commission
21 may prescribe.

22 “(5) COMMODITY CONTRACT.—A swap cleared
23 by or through a derivatives clearing organization
24 shall be considered to be a commodity contract as
25 such term is defined in section 761 of title 11,

1 United States Code, with regard to all money, secu-
2 rities, and property of any swaps customer received
3 by a futures commission merchant or a derivatives
4 clearing organization to margin, guarantee, or se-
5 cure the swap (including money, securities, or prop-
6 erty accruing to the customer as the result of the
7 swap).

8 “(6) PROHIBITION.—It shall be unlawful for
9 any person, including any derivatives clearing orga-
10 nization and any depository, that has received any
11 money, securities, or property for deposit in a sepa-
12 rate account or accounts as provided in paragraph
13 (2) to hold, dispose of, or use any such money, secu-
14 rities, or property as belonging to the depositing fu-
15 tures commission merchant or any person other than
16 the swaps customer of the futures commission mer-
17 chant.”.

18 (b) BANKRUPTCY TREATMENT OF CLEARED
19 SWAPS.—Section 761 of title 11, United States Code, is
20 amended—

21 (1) in paragraph (4), by striking subparagraph
22 (F) and inserting the following:

23 “(F)(i) any other contract, option, agree-
24 ment, or transaction that is similar to a con-

1 tract, option, agreement, or transaction referred
2 to in this paragraph; and

3 “(ii) with respect to a futures commission
4 merchant or a clearing organization, any other
5 contract, option, agreement, or transaction, in
6 each case, that is cleared by a clearing organi-
7 zation;”; and

8 (2) in paragraph (9)(A)(i), by striking “the
9 commodity futures account” and inserting “a com-
10modity contract account”.

11 (c) SEGREGATION REQUIREMENTS FOR UNCLEARED
12 SWAPS.—Section 4s of the Commodity Exchange Act (as
13 added by section 120) is amended by adding at the end
14 the following:

15 “(l) SEGREGATION REQUIREMENTS.—

16 “(1) SEGREGATION OF ASSETS HELD AS COL-
17 LATERAL IN UNCLEARED SWAP TRANSACTIONS.—

18 “(A) NOTIFICATION.—A swap dealer or
19 major swap participant shall be required to no-
20 tify the counterparty of the swap dealer or
21 major swap participant at the beginning of a
22 swap transaction that the counterparty has the
23 right to require segregation of the funds or
24 other property supplied to margin, guarantee,
25 or secure the obligations of the counterparty.

1 “(B) SEGREGATION AND MAINTENANCE OF
2 FUNDS.—At the request of a counterparty to a
3 swap that provides funds or other property to
4 a swap dealer or major swap participant to
5 margin, guarantee, or secure the obligations of
6 the counterparty, the swap dealer or major
7 swap participant shall—

8 “(i) segregate the funds or other
9 property for the benefit of the
10 counterparty; and

11 “(ii) in accordance with such rules
12 and regulations as the Commission may
13 promulgate, maintain the funds or other
14 property in a segregated account separate
15 from the assets and other interests of the
16 swap dealer or major swap participant.

17 “(2) APPLICABILITY.—The requirements de-
18 scribed in paragraph (1) shall—

19 “(A) apply only to a swap between a
20 counterparty and a swap dealer or major swap
21 participant that is not submitted for clearing to
22 a derivatives clearing organization; and

23 “(B) not preclude any commercial arrange-
24 ment regarding—

1 “(i) the investment of segregated
2 funds or other property that may only be
3 invested in such investments as the Com-
4 mission may permit by rule or regulation;
5 and

6 “(ii) the related allocation of gains
7 and losses resulting from any investment
8 of the segregated funds or other property.

9 “(3) USE OF INDEPENDENT THIRD-PARTY
10 CUSTODIANS.—The segregated account described in
11 paragraph (1) shall be—

12 “(A) carried by an independent third-party
13 custodian; and

14 “(B) designated as a segregated account
15 for and on behalf of the counterparty.

16 “(4) REPORTING REQUIREMENT.—If the
17 counterparty does not choose to require segregation
18 of the funds or other property supplied to margin,
19 guarantee, or secure the obligations of the
20 counterparty, the swap dealer or major swap partici-
21 pant shall report to the counterparty of the swap
22 dealer or major swap participant on a quarterly
23 basis that the back office procedures of the swap
24 dealer or major swap participant relating to margin

1 and collateral requirements are in compliance with
2 the agreement of the counterparties.”.

3 **SEC. 115. DERIVATIVES CLEARING ORGANIZATIONS.**

4 (a) REGISTRATION REQUIREMENT.—Section 5b of
5 the Commodity Exchange Act (7 U.S.C. 7a–1) is amended
6 by striking subsections (a) and (b) and inserting the fol-
7 lowing:

8 “(a) REGISTRATION REQUIREMENT.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), it shall be unlawful for a derivatives
11 clearing organization, directly or indirectly, to make
12 use of the mails or any means or instrumentality of
13 interstate commerce to perform the functions of a
14 derivatives clearing organization with respect to—

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

19 “(i) excluded from this Act by sub-
20 section (a)(1)(C)(i), (c), or (f) of section 2;
21 or

22 “(ii) a security futures product
23 cleared by a clearing agency registered
24 with the Securities and Exchange Commis-

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

3 “(B) a swap.

4 “(2) EXCEPTION.—Paragraph (1) shall not
5 apply to a derivatives clearing organization that is
6 registered with the Commission.

7 “(b) VOLUNTARY REGISTRATION.—A person that
8 clears 1 or more agreements, contracts, or transactions
9 that are not required to be cleared under this Act may
10 register with the Commission as a derivatives clearing or-
11 ganization.”.

12 (b) REGISTRATION FOR BANKS AND CLEARING
13 AGENCIES; EXEMPTIONS; COMPLIANCE OFFICER; AN-
14 NUAL REPORTS.—Section 5b of the Commodity Exchange
15 Act (7 U.S.C. 7a–1) is amended by adding at the end the
16 following:

17 “(g) REQUIRED REGISTRATION FOR BANKS AND
18 CLEARING AGENCIES.—A person that is required to be
19 registered as a derivatives clearing organization under this
20 section shall register with the Commission regardless of
21 whether the person is also licensed as a bank or a clearing
22 agency registered with the Securities and Exchange Com-
23 mission under the Securities Exchange Act of 1934 (15
24 U.S.C. 78a et seq.).

25 “(h) EXISTING BANKS AND CLEARING AGENCIES.—

1 “(1) IN GENERAL.—A bank or clearing agency
2 registered with the Securities and Exchange Com-
3 mission under the Securities Exchange Act of 1934
4 (15 U.S.C. 78a et seq.) that is required to be reg-
5 istered as a derivatives clearing organization under
6 this section is deemed to be registered under this
7 section to the extent that, before the date of enact-
8 ment of this subsection—

9 “(A) the bank cleared swaps as a multilat-
10 eral clearing organization; or

11 “(B) the clearing agency cleared swaps.

12 “(2) CONVERSION OF BANK.—A bank to which
13 this paragraph applies may, by the vote of the share-
14 holders owning not less than 51 percent of the vot-
15 ing interests of the bank, be converted into a State
16 corporation, partnership, limited liability company,
17 or similar legal form pursuant to a plan of conver-
18 sion, if the conversion is not in contravention of ap-
19 plicable State law.

20 “(i) EXEMPTIONS.—The Commission may exempt,
21 conditionally or unconditionally, a person from registra-
22 tion under this section for the clearing of swaps if—

23 “(1) the Commission determines that the per-
24 son is subject to comparable, comprehensive super-
25 vision and regulation; and

1 “(2) the person is a clearing agency registered
2 with the Securities and Exchange Commission under
3 the Securities Exchange Act of 1934 (15 U.S.C. 78a
4 et seq.).

5 “(j) DESIGNATION OF CHIEF COMPLIANCE OFFI-
6 CER.—

7 “(1) IN GENERAL.—Each derivatives clearing
8 organization shall designate an individual to serve as
9 a chief compliance officer.

10 “(2) DUTIES.—The chief compliance officer
11 shall—

12 “(A) report directly to the board or to the
13 senior officer of the derivatives clearing organi-
14 zation;

15 “(B) review the compliance of the deriva-
16 tives clearing organization with respect to the
17 core principles described in subsection (c)(2);

18 “(C) in consultation with the board of the
19 derivatives clearing organization, a body per-
20 forming a function similar to the board of the
21 derivatives clearing organization, or the senior
22 officer of the derivatives clearing organization,
23 resolve any conflicts of interest that may arise;

1 “(D) be responsible for administering each
2 policy and procedure that is required to be es-
3 tablished pursuant to this section;

4 “(E) ensure compliance with this Act (in-
5 cluding regulations) relating to agreements,
6 contracts, or transactions, including each rule
7 prescribed by the Commission under this sec-
8 tion;

9 “(F) establish procedures for the remedi-
10 ation of noncompliance issues identified by the
11 compliance officer through any—

12 “(i) compliance office review;

13 “(ii) look-back;

14 “(iii) internal or external audit find-
15 ing;

16 “(iv) self-reported error; or

17 “(v) validated complaint; and

18 “(G) establish and follow appropriate pro-
19 cedures for the handling, management response,
20 remediation, retesting, and closing of non-
21 compliance issues.

22 “(3) ANNUAL REPORTS.—

23 “(A) IN GENERAL.—In accordance with
24 rules prescribed by the Commission, the chief

1 compliance officer shall annually prepare and
2 sign a report that contains a description of—

3 “(i) the compliance of the derivatives
4 clearing organization of the compliance of-
5 ficer with respect to this Act (including
6 regulations); and

7 “(ii) each policy and procedure of the
8 derivatives clearing organization of the
9 compliance officer (including the code of
10 ethics and conflict of interest policies of
11 the derivatives clearing organization).

12 “(B) REQUIREMENTS.—A compliance re-
13 port under subparagraph (A) shall—

14 “(i) accompany each appropriate fi-
15 nancial report of the derivatives clearing
16 organization that is required to be fur-
17 nished to the Commission pursuant to this
18 section; and

19 “(ii) include a certification that, under
20 penalty of law, the compliance report is ac-
21 curate and complete.”.

22 (c) CORE PRINCIPLES FOR DERIVATIVES CLEARING
23 ORGANIZATIONS.—Section 5b(c) of the Commodity Ex-
24 change Act (7 U.S.C. 7a-1(c)) is amended by striking
25 paragraph (2) and inserting the following:

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

3 “(A) COMPLIANCE.—

4 “(i) IN GENERAL.—To be registered
5 and to maintain registration as a deriva-
6 tives clearing organization, a derivatives
7 clearing organization shall comply with
8 each core principle described in this para-
9 graph and any requirement that the Com-
10 mission may impose by rule or regulation
11 pursuant to section 8a(5).

12 “(ii) DISCRETION OF DERIVATIVES
13 CLEARING ORGANIZATION.—Subject to any
14 rule or regulation prescribed by the Com-
15 mission, a derivatives clearing organization
16 shall have reasonable discretion in estab-
17 lishing the manner by which the derivatives
18 clearing organization complies with each
19 core principle described in this paragraph.

20 “(B) FINANCIAL RESOURCES.—

21 “(i) IN GENERAL.—Each derivatives
22 clearing organization shall have adequate
23 financial, operational, and managerial re-
24 sources, as determined by the Commission,

1 to discharge each responsibility of the de-
2 rivatives clearing organization.

3 “(ii) MINIMUM AMOUNT OF FINAN-
4 CIAL RESOURCES.—Each derivatives clear-
5 ing organization shall possess financial re-
6 sources that, at a minimum, exceed the
7 total amount that would—

8 “(I) enable the derivatives clear-
9 ing organization to meet each finan-
10 cial obligation of the derivatives clear-
11 ing organization to each member and
12 participant of the derivatives clearing
13 organization; and

14 “(II) enable the derivatives clear-
15 ing organization to cover the oper-
16 ating costs of the derivatives clearing
17 organization for a period of 1 year (as
18 calculated on a rolling basis).

19 “(C) PARTICIPANT AND PRODUCT ELIGI-
20 BILITY.—

21 “(i) IN GENERAL.—Each derivatives
22 clearing organization shall establish—

23 “(I) appropriate admission and
24 continuing eligibility standards (in-
25 cluding sufficient financial resources

1 and operational capacity to meet obli-
2 gations arising from participation in
3 the derivatives clearing organization)
4 for members of, and participants in,
5 the derivatives clearing organization;
6 and

7 “(II) appropriate standards for
8 determining the eligibility of agree-
9 ments, contracts, and transactions
10 submitted to the derivatives clearing
11 organization for clearing.

12 “(ii) REQUIRED PROCEDURES.—Each
13 derivatives clearing organization shall es-
14 tablish and implement procedures to verify,
15 on an ongoing basis, the compliance of
16 each participation and membership re-
17 quirement of the derivatives clearing orga-
18 nization.

19 “(iii) REQUIREMENTS.—The partici-
20 pation and membership requirements of
21 each derivatives clearing organization
22 shall—

23 “(I) be objective;

24 “(II) be publicly disclosed; and

1 “(III) permit fair and open ac-
2 cess.

3 “(D) RISK MANAGEMENT.—

4 “(i) IN GENERAL.—Each derivatives
5 clearing organization shall ensure that the
6 derivatives clearing organization possesses
7 the ability to manage the risks associated
8 with discharging the responsibilities of the
9 derivatives clearing organization through
10 the use of appropriate tools and proce-
11 dures.

12 “(ii) MEASUREMENT OF CREDIT EX-
13 POSURE.—Each derivatives clearing orga-
14 nization shall—

15 “(I) not less than once during
16 each business day of the derivatives
17 clearing organization, measure the
18 credit exposures of the derivatives
19 clearing organization to each member
20 and participant of the derivatives
21 clearing organization; and

22 “(II) monitor each exposure de-
23 scribed in subclause (I) periodically
24 during the business day of the deriva-
25 tives clearing organization.

1 “(iii) LIMITATION OF EXPOSURE TO
2 POTENTIAL LOSSES FROM DEFAULTS.—
3 Each derivatives clearing organization,
4 through margin requirements and other
5 risk control mechanisms, shall limit the ex-
6 posure of the derivatives clearing organiza-
7 tion to potential losses from defaults by
8 members and participants of the deriva-
9 tives clearing organization to ensure that—

10 “(I) the operations of the deriva-
11 tives clearing organization would not
12 be disrupted; and

13 “(II) nondefaulting members or
14 participants would not be exposed to
15 losses that nondefaulting members or
16 participants cannot anticipate or con-
17 trol.

18 “(iv) MARGIN REQUIREMENTS.—The
19 margin required from each member and
20 participant of a derivatives clearing organi-
21 zation shall be sufficient to cover potential
22 exposures in normal market conditions.

23 “(v) REQUIREMENTS REGARDING
24 MODELS AND PARAMETERS.—Each model

1 and parameter used in setting margin re-
2 quirements under clause (iv) shall be—

3 “(I) risk-based; and

4 “(II) reviewed on a regular basis.

5 “(E) SETTLEMENT PROCEDURES.—Each
6 derivatives clearing organization shall—

7 “(i) complete money settlements on a
8 timely basis (but not less frequently than
9 once each business day);

10 “(ii) employ money settlement ar-
11 rangements to eliminate or strictly limit
12 the exposure of the derivatives clearing or-
13 ganization to settlement bank risks (in-
14 cluding credit and liquidity risks from the
15 use of banks to effect money settlements);

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

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

21 “(v) possess the ability to comply with
22 each term and condition of any permitted
23 netting or offset arrangement with any
24 other clearing organization;

1 “(vi) regarding physical settlements,
2 establish rules that clearly state each obli-
3 gation of the derivatives clearing organiza-
4 tion with respect to physical deliveries; and

5 “(vii) ensure that each risk arising
6 from an obligation described in clause (vi)
7 is identified and managed.

8 “(F) TREATMENT OF FUNDS.—

9 “(i) REQUIRED STANDARDS AND PRO-
10 CEDURES.—Each derivatives clearing orga-
11 nization shall establish standards and pro-
12 cedures that are designed to protect and
13 ensure the safety of member and partici-
14 pant funds and assets.

15 “(ii) HOLDING OF FUNDS AND AS-
16 SETS.—Each derivatives clearing organiza-
17 tion shall hold member and participant
18 funds and assets in a manner by which to
19 minimize the risk of loss or of delay in the
20 access by the derivatives clearing organiza-
21 tion to the assets and funds.

22 “(iii) PERMISSIBLE INVESTMENTS.—
23 Funds and assets invested by a derivatives
24 clearing organization shall be held in in-

1 struments with minimal credit, market,
2 and liquidity risks.

3 “(G) DEFAULT RULES AND PROCE-
4 DURES.—

5 “(i) IN GENERAL.—Each derivatives
6 clearing organization shall have rules and
7 procedures designed to allow for the effi-
8 cient, fair, and safe management of events
9 during which members or participants—

10 “(I) become insolvent; or

11 “(II) otherwise default on the ob-
12 ligations of the members or partici-
13 pants to the derivatives clearing orga-
14 nization.

15 “(ii) DEFAULT PROCEDURES.—Each
16 derivatives clearing organization shall—

17 “(I) clearly state the default pro-
18 cedures of the derivatives clearing or-
19 ganization;

20 “(II) make publicly available the
21 default rules of the derivatives clear-
22 ing organization; and

23 “(III) ensure that the derivatives
24 clearing organization may take timely
25 action—

1 “(I) SYSTEM SAFEGUARDS.—Each deriva-
2 tives clearing organization shall—

3 “ (i) establish and maintain a program
4 of risk analysis and oversight to identify
5 and minimize sources of operational risk
6 through the development of appropriate
7 controls and procedures, and automated
8 systems, that are reliable, secure, and have
9 adequate scalable capacity;

10 “(ii) establish and maintain emer-
11 gency procedures, backup facilities, and a
12 plan for disaster recovery that allows for—

13 “ (I) the timely recovery and re-
14 sumption of operations of the deriva-
15 tives clearing organization; and

16 “ (II) the fulfillment of each obli-
17 gation and responsibility of the de-
18 rivatives clearing organization; and

19 “ (iii) periodically conduct tests to
20 verify that the backup resources of the de-
21 rivatives clearing organization are suffi-
22 cient to ensure daily processing, clearing,
23 and settlement.

24 “(J) REPORTING.—Each derivatives clear-
25 ing organization shall provide to the Commis-

1 sion all information that the Commission deter-
2 mines to be necessary to conduct oversight of
3 the derivatives clearing organization.

4 “(K) RECORDKEEPING.—Each derivatives
5 clearing organization shall maintain records of
6 all activities related to the business of the de-
7 rivatives clearing organization as a derivatives
8 clearing organization—

9 “(i) in a form and manner that is ac-
10 ceptable to the Commission; and

11 “(ii) for a period of not less than 5
12 years.

13 “(L) PUBLIC INFORMATION.—

14 “(i) IN GENERAL.—Each derivatives
15 clearing organization shall provide to mar-
16 ket participants sufficient information to
17 enable the market participants to identify
18 and evaluate accurately the risks and costs
19 associated with using the services of the
20 derivatives clearing organization.

21 “(ii) AVAILABILITY OF INFORMA-
22 TION.—Each derivatives clearing organiza-
23 tion shall make information concerning the
24 rules and operating procedures governing
25 the clearing and settlement systems of the

1 derivatives clearing organization available
2 to market participants.

3 “(iii) PUBLIC DISCLOSURE.—Each de-
4 rivatives clearing organization shall dis-
5 close publicly and to the Commission infor-
6 mation concerning—

7 “(I) the terms and conditions of
8 each contract, agreement, and other
9 transaction cleared and settled by the
10 derivatives clearing organization;

11 “(II) each clearing and other fee
12 that the derivatives clearing organiza-
13 tion charges the members and partici-
14 pants of the derivatives clearing orga-
15 nization;

16 “(III) the margin-setting method-
17 ology, and the size and composition,
18 of the financial resource package of
19 the derivatives clearing organization;

20 “(IV) daily settlement prices, vol-
21 ume, and open interest for each con-
22 tract settled or cleared by the deriva-
23 tives clearing organization; and

24 “(V) any other matter relevant to
25 participation in the settlement and

1 clearing activities of the derivatives
2 clearing organization.

3 “(M) INFORMATION-SHARING.—Each de-
4 rivatives clearing organization shall—

5 “(i) enter into, and abide by the terms
6 of, each appropriate and applicable domes-
7 tic and international information-sharing
8 agreement; and

9 “(ii) use relevant information obtained
10 from each agreement described in clause
11 (i) in carrying out the risk management
12 program of the derivatives clearing organi-
13 zation.

14 “(N) ANTITRUST CONSIDERATIONS.—Un-
15 less appropriate to achieve the purposes of this
16 Act, a derivatives clearing organization may
17 not—

18 “(i) adopt any rule or take any action
19 that results in any unreasonable restraint
20 of trade; or

21 “(ii) impose any material anticompeti-
22 tive burden.

23 “(O) GOVERNANCE FITNESS STAND-
24 ARDS.—

1 “(i) GOVERNANCE ARRANGEMENTS.—

2 Each derivatives clearing organization shall

3 establish governance arrangements that

4 are transparent—

5 “(I) to fulfill public interest re-
6 quirements; and

7 “(II) to support the objectives of
8 owners and participants.

9 “(ii) FITNESS STANDARDS.—Each de-
10 rivatives clearing organization shall estab-
11 lish and enforce appropriate fitness stand-
12 ards for—

13 “(I) directors;

14 “(II) members of any disciplinary
15 committee;

16 “(III) members of the derivatives
17 clearing organization;

18 “(IV) any other individual or en-
19 tity with direct access to the settle-
20 ment or clearing activities of the de-
21 rivatives clearing organization; and

22 “(V) any party affiliated with
23 any individual or entity described in
24 this clause.

1 “(P) CONFLICTS OF INTEREST.—Each de-
2 rivatives clearing organization shall—

3 “ (i) establish and enforce rules to
4 minimize conflicts of interest in the deci-
5 sionmaking process of the derivatives clear-
6 ing organization; and

7 “ (ii) establish a process for resolving
8 conflicts of interest described in clause (i).

9 “(Q) COMPOSITION OF GOVERNING
10 BOARDS.—Each derivatives clearing organiza-
11 tion shall ensure that the composition of the
12 governing board or committee of the derivatives
13 clearing organization includes market partici-
14 pants.

15 “(R) LEGAL RISK.—Each derivatives clear-
16 ing organization shall have a well-founded,
17 transparent, and enforceable legal framework
18 for each aspect of the activities of the deriva-
19 tives clearing organization.”.

20 (d) REPORTING REQUIREMENTS.—Section 5b of the
21 Commodity Exchange Act (7 U.S.C. 7a–1) (as amended
22 by subsection (b)) is amended by adding at the end the
23 following:

24 “(k) REPORTING REQUIREMENTS.—

1 “(1) DUTY OF DERIVATIVES CLEARING ORGANI-
2 ZATIONS.—Each derivatives clearing organization
3 that clears swaps shall provide to the Commission all
4 information that is determined by the Commission to
5 be necessary to perform each responsibility of the
6 Commission under this Act.

7 “(2) DATA COLLECTION AND MAINTENANCE
8 REQUIREMENTS.—The Commission shall adopt data
9 collection and maintenance requirements for swaps
10 cleared by derivatives clearing organizations that are
11 comparable to the corresponding requirements for—

12 “(A) swaps data reported to swap data re-
13 positories; and

14 “(B) swaps traded on swap execution fa-
15 cilities.

16 “(3) INFORMATION SHARING.—Subject to sec-
17 tion 8, and upon request, the Commission shall
18 share information collected under paragraph (2)
19 with—

20 “(A) the Board;

21 “(B) the Securities and Exchange Commis-
22 sion;

23 “(C) each appropriate prudential regulator;

24 “(D) the Financial Services Oversight
25 Council;

1 “(E) the Department of Justice; and

2 “(F) any other person that the Commis-
3 sion determines to be appropriate, including—

4 “(i) foreign financial supervisors (in-
5 cluding foreign futures authorities);

6 “(ii) foreign central banks; and

7 “(iii) foreign ministries.

8 “(4) CONFIDENTIALITY AND INDEMNIFICATION
9 AGREEMENT.—Before the Commission may share in-
10 formation with any entity described in paragraph
11 (3)—

12 “(A) the Commission shall receive a writ-
13 ten agreement from each entity stating that the
14 entity shall abide by the confidentiality require-
15 ments described in section 8 relating to the in-
16 formation on swap transactions that is pro-
17 vided; and

18 “(B) each entity shall agree to indemnify
19 the Commission for any expenses arising from
20 litigation relating to the information provided
21 under section 8.

22 “(5) PUBLIC INFORMATION.—Each derivatives
23 clearing organization that clears swaps shall provide
24 to the Commission (including any designee of the
25 Commission) information under paragraph (2) in

1 such form and at such frequency as is required by
2 the Commission to comply with the public reporting
3 requirements contained in section 2(a)(13).”.

4 (e) PUBLIC DISCLOSURE.—Section 8(e) of the Com-
5 modity Exchange Act (7 U.S.C. 12(e)) is amended in the
6 last sentence—

7 (1) by inserting “, central bank and min-
8 istries,” after “department” each place it appears;
9 and

10 (2) by striking “. is a party.” and inserting “,
11 is a party.”.

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

14 (1) REPEALS.—The Legal Certainty for Bank
15 Products Act of 2000 (7 U.S.C. 27 et seq.) is
16 amended—

17 (A) by striking sections 404 and 407 (7
18 U.S.C. 27b, 27e);

19 (B) in section 402 (7 U.S.C. 27), by strik-
20 ing subsection (d); and

21 (C) in section 408 (7 U.S.C. 27f)—

22 (i) in subsection (c)—

23 (I) by striking “in the case” and
24 all that follows through “a hybrid”

1 and inserting “in the case of a hy-
2 brid”;

3 (II) by striking “; or” and insert-
4 ing a period; and

5 (III) by striking paragraph (2);

6 (ii) by striking subsection (b); and

7 (iii) by redesignating subsection (c) as
8 subsection (b).

9 (2) **LEGAL CERTAINTY FOR BANK PRODUCTS**
10 **ACT OF 2000.**—Section 403 of the Legal Certainty
11 for Bank Products Act of 2000 (7 U.S.C. 27a) is
12 amended to read as follows:

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

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

16 “(1) the Commodity Exchange Act (7 U.S.C. 1
17 et seq.) shall not apply to, and the Commodity Fu-
18 tures Trading Commission shall not exercise regu-
19 latory authority under the Commodity Exchange Act
20 (7 U.S.C. 1 et seq.) with respect to, an identified
21 banking product; and

22 “(2) the definition of ‘security-based swap’ in
23 section 3(a)(68) of the Securities Exchange Act of
24 1934 does not include any identified bank product.

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

7 “(1) would meet the definition of a ‘swap’
8 under section 1a(46) of the Commodity Exchange
9 Act (7 U.S.C. 1a) or a ‘security-based swap’ under
10 that section 3(a)(68) of the Securities Exchange Act
11 of 1934; and

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

19 “(c) EXCEPTION.—The exclusions in subsection (a)
20 shall not apply to an identified bank product that—

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

24 “(2) meets the definition of swap in section
25 1a(46) of the Commodity Exchange Act or security-

1 based swap in section 3(a)(68) of the Securities Ex-
2 change Act of 1934; and

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

10 **SEC. 116. PUBLIC REPORTING OF SWAP TRANSACTION**

11 **DATA.**

12 Section 2(a) of the Commodity Exchange Act (7
13 U.S.C. 2(a)) is amended by adding at the end the fol-
14 lowing:

15 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-
16 ACTION DATA.—

17 “(A) DEFINITION OF REAL-TIME PUBLIC
18 REPORTING.—In this paragraph, the term ‘real-
19 time public reporting’ means to report data re-
20 lating to a swap transaction as soon as techno-
21 logically practicable after the time at which the
22 swap transaction has been executed.

23 “(B) PURPOSE.—The purpose of this sec-
24 tion is to authorize the Commission to make
25 swap transaction and pricing data available to

1 the public in such form and at such times as
2 the Commission determines appropriate to en-
3 hance price discovery.

4 “(C) GENERAL RULE.—The Commission is
5 authorized to provide by rule for the public
6 availability of swap transaction and pricing
7 data as follows:

8 “(i) With respect to those swaps that
9 are subject to the mandatory clearing re-
10 quirement described in subsection (h)(2)
11 (including those swaps that are exempted
12 from the requirement pursuant to sub-
13 section (h)(4)), the Commission shall re-
14 quire real-time public reporting for such
15 transactions.

16 “(ii) With respect to those swaps that
17 are not subject to the mandatory clearing
18 requirement described in subsection (h)(2),
19 but are cleared at a registered derivatives
20 clearing organization, the Commission
21 shall require real-time public reporting for
22 such transactions.

23 “(iii) With respect to swaps that are
24 not cleared at a registered derivatives
25 clearing organization and which are re-

1 ported to a swap data repository or the
2 Commission under subsection (h), the
3 Commission shall make available to the
4 public, in a manner that does not disclose
5 the business transactions and market posi-
6 tions of any person, aggregate data on
7 such swap trading volumes and positions.

8 “(D) REGISTERED ENTITIES AND PUBLIC
9 REPORTING.—The Commission may require
10 registered entities to publicly disseminate the
11 swap transaction and pricing data required to
12 be reported under this paragraph.

13 “(E) RULEMAKING REQUIRED.—With re-
14 spect to the rule providing for the public avail-
15 ability of transaction and pricing data for
16 swaps described in clauses (i) and (ii) of sub-
17 paragraph (C), the rule promulgated by the
18 Commission shall contain provisions—

19 “(i) to ensure such information does
20 not identify the participants;

21 “(ii) to specify the criteria for deter-
22 mining what constitutes a large notional
23 swap transaction (block trade) for par-
24 ticular markets and contracts;

1 “(iii) to specify the appropriate time
2 delay for reporting large notional swap
3 transactions (block trades) to the public;
4 and

5 “(iv) that take into account whether
6 the public disclosure will materially reduce
7 market liquidity.

8 “(F) TIMELINESS OF REPORTING.—Par-
9 ties to a swap (including agents of the parties
10 to a swap) shall be responsible for reporting
11 swap transaction information to the appropriate
12 registered entity in a timely manner as may be
13 prescribed by the Commission.

14 “(14) SEMIANNUAL AND ANNUAL PUBLIC RE-
15 PORTING OF AGGREGATE SWAP DATA.—

16 “(A) IN GENERAL.—In accordance with
17 subparagraph (B), the Commission shall issue a
18 written report on a semiannual and annual
19 basis to make available to the public informa-
20 tion relating to—

21 “(i) the trading and clearing in the
22 major swap categories; and

23 “(ii) the market participants and de-
24 velopments in new products.

1 “(B) USE; CONSULTATION.—In preparing
2 a report under subparagraph (A), the Commis-
3 sion shall—

4 “(i) use information from swap data
5 repositories and derivatives clearing orga-
6 nizations; and

7 “(ii) consult with the Office of the
8 Comptroller of the Currency, the Bank for
9 International Settlements, and such other
10 regulatory bodies as may be necessary.”.

11 **SEC. 117. SWAP DATA REPOSITORIES.**

12 The Commodity Exchange Act is amended by insert-
13 ing after section 20 (7 U.S.C. 24) the following:

14 **“SEC. 21. SWAP DATA REPOSITORIES.**

15 “(a) REGISTRATION REQUIREMENT.—

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

21 “(2) INSPECTION AND EXAMINATION.—Each
22 registered swap data repository shall be subject to
23 inspection and examination by any representative of
24 the Commission.

25 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

1 “(A) IN GENERAL.—To be registered, and
2 maintain registration, as a swap data reposi-
3 tory, the swap data repository shall comply
4 with—

5 “(i) the core principles described in
6 this subsection; and

7 “(ii) any requirement that the Com-
8 mission may impose by rule or regulation
9 pursuant to section 8a(5).

10 “(B) REASONABLE DISCRETION OF SWAP
11 DATA REPOSITORY.—Unless otherwise deter-
12 mined by the Commission by rule or regulation,
13 a swap data repository described in subpara-
14 graph (A) shall have reasonable discretion in
15 establishing the manner in which the swap data
16 repository complies with the core principles de-
17 scribed in this subsection.

18 “(b) STANDARD SETTING.—

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

23 “(2) DATA COLLECTION AND MAINTENANCE.—
24 The Commission shall prescribe data collection and

1 data maintenance standards for swap data reposi-
2 tories.

3 “(3) COMPARABILITY.—The standards pre-
4 scribed by the Commission under this subsection
5 shall be comparable to the data standards imposed
6 by the Commission on derivatives clearing organiza-
7 tions in connection with their clearing of swaps.

8 “(c) DUTIES.—A swap data repository shall—

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

11 “(2) confirm with both counterparties to the
12 swap the accuracy of the data that was submitted;

13 “(3) maintain the data described in paragraph
14 (1) in such form, in such manner, and for such pe-
15 riod as may be required by the Commission;

16 “(4)(A) provide direct electronic access to the
17 Commission (or any designee of the Commission, in-
18 cluding another registered entity); and

19 “(B) provide the information described in para-
20 graph (1) in such form and at such frequency as the
21 Commission may require to comply with the public
22 reporting requirements contained in section
23 2(a)(13);

1 “(5) at the direction of the Commission, estab-
2 lish automated systems for monitoring, screening,
3 and analyzing swap data;

4 “(6) maintain the privacy of any and all swap
5 transaction information that the swap data reposi-
6 tory receives from a swap dealer, counterparty, or
7 any other registered entity; and

8 “(7) on a confidential basis pursuant to section
9 8, upon request, and after notifying the Commission
10 of the request, make available all data obtained by
11 the swap data repository, including individual
12 counterparty trade and position data, to—

13 “(A) each appropriate prudential regulator;

14 “(B) the Financial Services Oversight
15 Council;

16 “(C) the Securities and Exchange Commis-
17 sion;

18 “(D) the Department of Justice; and

19 “(E) any other person that the Commis-
20 sion determines to be appropriate, including—

21 “(i) foreign financial supervisors (in-
22 cluding foreign futures authorities);

23 “(ii) foreign central banks; and

24 “(iii) foreign ministries.

1 “(C) in consultation with the board of the
2 swap data repository, a body performing a func-
3 tion similar to the board of the swap data re-
4 pository, or the senior officer of the swap data
5 repository, resolve any conflicts of interest that
6 may arise;

7 “(D) be responsible for administering each
8 policy and procedure that is required to be es-
9 tablished pursuant to this section;

10 “(E) ensure compliance with this Act (in-
11 cluding regulations) relating to agreements,
12 contracts, or transactions, including each rule
13 prescribed by the Commission under this sec-
14 tion;

15 “(F) establish procedures for the remedi-
16 ation of noncompliance issues identified by the
17 chief compliance officer through any—

18 “(i) compliance office review;

19 “(ii) look-back;

20 “(iii) internal or external audit find-
21 ing;

22 “(iv) self-reported error; or

23 “(v) validated complaint; and

24 “(G) establish and follow appropriate pro-
25 cedures for the handling, management response,

1 remediation, retesting, and closing of non-
2 compliance issues.

3 “(3) ANNUAL REPORTS.—

4 “(A) IN GENERAL.—In accordance with
5 rules prescribed by the Commission, the chief
6 compliance officer shall annually prepare and
7 sign a report that contains a description of—

8 “(i) the compliance of the swap data
9 repository of the chief compliance officer
10 with respect to this Act (including regula-
11 tions); and

12 “(ii) each policy and procedure of the
13 swap data repository of the chief compli-
14 ance officer (including the code of ethics
15 and conflict of interest policies of the swap
16 data repository).

17 “(B) REQUIREMENTS.—A compliance re-
18 port under subparagraph (A) shall—

19 “(i) accompany each appropriate fi-
20 nancial report of the swap data repository
21 that is required to be furnished to the
22 Commission pursuant to this section; and

23 “(ii) include a certification that, under
24 penalty of law, the compliance report is ac-
25 curate and complete.

1 “(e) CORE PRINCIPLES APPLICABLE TO SWAP DATA
2 REPOSITORIES.—

3 “(1) ANTITRUST CONSIDERATIONS.—Unless
4 specifically reviewed and approved by the Commis-
5 sion for antitrust purposes, a swap data repository
6 may not—

7 “(A) adopt any rule or take any action
8 that results in any unreasonable restraint of
9 trade; or

10 “(B) impose any material anticompetitive
11 burden on the trading, clearing, or reporting of
12 transactions.

13 “(2) GOVERNANCE ARRANGEMENTS.—Each
14 swap data repository shall establish governance ar-
15 rangements that are transparent—

16 “(A) to fulfill public interest requirements;
17 and

18 “(B) to support the objectives of the Fed-
19 eral Government, owners, and participants.

20 “(3) CONFLICTS OF INTEREST.—Each swap
21 data repository shall—

22 “(A) establish and enforce rules to mini-
23 mize conflicts of interest in the decisionmaking
24 process of the swap data repository; and

1 “(B) establish a process for resolving con-
2 flicts of interest described in subparagraph (A).

3 “(f) **REQUIRED REGISTRATION FOR SWAP DATA RE-**
4 **POSITORIES.**—Any person that is required to be registered
5 as a swap data repository under this section shall register
6 with the Commission regardless of whether that person is
7 also licensed as a bank or registered with the Securities
8 and Exchange Commission as a swap data repository.

9 “(g) **RULES.**—The Commission shall adopt rules gov-
10 erning persons that are registered under this section.”.

11 **SEC. 118. REPORTING AND RECORDKEEPING.**

12 The Commodity Exchange Act is amended by insert-
13 ing after section 4q (7 U.S.C. 6o-1) the following:

14 **“SEC. 4r. REPORTING AND RECORDKEEPING FOR**
15 **UNCLEARED SWAPS.**

16 “(a) **REQUIRED REPORTING OF SWAPS NOT ACCEPT-**
17 **ED BY ANY DERIVATIVES CLEARING ORGANIZATION.**—

18 “(1) **IN GENERAL.**—Each swap that is not ac-
19 cepted for clearing by any derivatives clearing orga-
20 nization shall be reported to—

21 “(A) a swap data repository described in
22 section 21; or

23 “(B) in the case in which there is no swap
24 data repository that would accept the swap, to
25 the Commission pursuant to this section within

1 such time period as the Commission may by
2 rule or regulation prescribe.

3 “(2) TRANSITION RULE FOR PREENACTMENT
4 SWAPS.—

5 “(A) SWAPS ENTERED INTO BEFORE THE
6 DATE OF ENACTMENT OF THE WALL STREET
7 TRANSPARENCY AND ACCOUNTABILITY ACT OF
8 2010.—Each swap entered into before the date
9 of enactment of the Wall Street Transparency
10 and Accountability Act of 2010, the terms of
11 which have not expired as of the date of enact-
12 ment of that Act, shall be reported to a reg-
13 istered swap data repository or the Commission
14 by a date that is not later than—

15 “(i) 30 days after issuance of the in-
16 terim final rule; or

17 “(ii) such other period as the Com-
18 mission determines to be appropriate.

19 “(B) COMMISSION RULEMAKING.—The
20 Commission shall promulgate an interim final
21 rule within 90 days of the date of enactment of
22 this section providing for the reporting of each
23 swap entered into before the date of enactment
24 as referenced in subparagraph (A).

1 “(C) EFFECTIVE DATE.—The reporting
2 provisions described in this section shall be ef-
3 fective upon the enactment of this section.

4 “(3) REPORTING OBLIGATIONS.—

5 “(A) SWAPS IN WHICH ONLY 1
6 COUNTERPARTY IS A SWAP DEALER OR MAJOR
7 SWAP PARTICIPANT.—With respect to a swap in
8 which only 1 counterparty is a swap dealer or
9 major swap participant, the swap dealer or
10 major swap participant shall report the swap as
11 required under paragraphs (1) and (2).

12 “(B) SWAPS IN WHICH 1 COUNTERPARTY
13 IS A SWAP DEALER AND THE OTHER A MAJOR
14 SWAP PARTICIPANT.—With respect to a swap in
15 which 1 counterparty is a swap dealer and the
16 other a major swap participant, the swap dealer
17 shall report the swap as required under para-
18 graphs (1) and (2).

19 “(C) OTHER SWAPS.—With respect to any
20 other swap not described in subparagraph (A)
21 or (B), the counterparties to the swap shall se-
22 lect a counterparty to report the swap as re-
23 quired under paragraphs (1) and (2).

24 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
25 vidual or entity that enters into a swap shall meet each

1 requirement described in subsection (c) if the individual
2 or entity did not—

3 “(1) clear the swap in accordance with section
4 2(h)(1); or

5 “(2) have the data regarding the swap accepted
6 by a swap data repository in accordance with rules
7 (including timeframes) adopted by the Commission
8 under section 21.

9 “(c) REQUIREMENTS.—An individual or entity de-
10 scribed in subsection (b) shall—

11 “(1) upon written request from the Commis-
12 sion, provide reports regarding the swaps held by the
13 individual or entity to the Commission in such form
14 and in such manner as the Commission may request;
15 and

16 “(2) maintain books and records pertaining to
17 the swaps held by the individual or entity in such
18 form, in such manner, and for such period as the
19 Commission may require, which shall be open to in-
20 spection by—

21 “(A) any representative of the Commis-
22 sion;

23 “(B) an appropriate prudential regulator;

24 “(C) the Securities and Exchange Commis-
25 sion;

1 “(D) the Financial Services Oversight
2 Council; and

3 “(E) the Department of Justice.

4 “(d) IDENTICAL DATA.—In prescribing rules under
5 this section, the Commission shall require individuals and
6 entities described in subsection (b) to submit to the Com-
7 mission a report that contains data that is not less com-
8 prehensive than the data required to be collected by swap
9 data repositories under section 21.”.

10 **SEC. 119. LARGE SWAP TRADER REPORTING.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by adding after section 4s (as added by section
13 120) the following:

14 **“SEC. 4r. LARGE SWAP TRADER REPORTING.**

15 “(a) PROHIBITION.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), it shall be unlawful for any person to
18 enter into any swap that the Commission determines
19 to perform a significant price discovery function with
20 respect to registered entities if—

21 “(A) the person directly or indirectly en-
22 ters into the swap during any 1 day in an
23 amount equal to or in excess of such amount as
24 shall be established periodically by the Commis-
25 sion; and

1 “(B) the person directly or indirectly has
2 or obtains a position in the swap equal to or in
3 excess of such amount as shall be established
4 periodically by the Commission.

5 “(2) EXCEPTION.—Paragraph (1) shall not
6 apply if—

7 “(A) the person files or causes to be filed
8 with the properly designated officer of the Com-
9 mission such reports regarding any transactions
10 or positions described in subparagraphs (A) and
11 (B) of paragraph (1) as the Commission may
12 require by rule or regulation; and

13 “(B) in accordance with the rules and reg-
14 ulations of the Commission, the person keeps
15 books and records of all such swaps and any
16 transactions and positions in any related com-
17 modity traded on or subject to the rules of any
18 board of trade, and of cash or spot transactions
19 in, inventories of, and purchase and sale com-
20 mitments of, such a commodity.

21 “(b) REQUIREMENTS.—Books and records described
22 in subsection (a)(2)(B) shall—

23 “(1) show such complete details concerning all
24 transactions and positions as the Commission may
25 prescribe by rule or regulation; and

1 “(2) be open at all times to inspection and ex-
2 amination by any representative of the Commission.

3 “(c) APPLICABILITY.—For purposes of this section,
4 the swaps, futures, and cash or spot transactions and posi-
5 tions of any person shall include the swaps, futures, and
6 cash or spot transactions and positions of any persons di-
7 rectly or indirectly controlled by the person.

8 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—
9 In making a determination as to whether a swap performs
10 or affects a significant price discovery function with re-
11 spect to registered entities, the Commission shall consider
12 the factors described in section 4a(a)(3).”.

13 **SEC. 120. REGISTRATION AND REGULATION OF SWAP DEAL-**
14 **ERS AND MAJOR SWAP PARTICIPANTS.**

15 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
16 is amended by inserting after section 4r (as added by sec-
17 tion 118) the following:

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

20 “(a) REGISTRATION.—

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

24 “(2) MAJOR SWAP PARTICIPANTS.—It shall be
25 unlawful for any person to act as a major swap par-

1 ticipant unless the person is registered as a major
2 swap participant with the Commission.

3 “(b) REQUIREMENTS.—

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

7 “(2) CONTENTS.—

8 “(A) IN GENERAL.—The application shall
9 be made in such form and manner as prescribed
10 by the Commission, and shall contain such in-
11 formation, as the Commission considers nec-
12 essary concerning the business in which the ap-
13 plicant is or will be engaged.

14 “(B) CONTINUAL REPORTING.—A person
15 that is registered as a swap dealer or major
16 swap participant shall continue to submit to the
17 Commission reports that contain such informa-
18 tion pertaining to the business of the person as
19 the Commission may require.

20 “(3) EXPIRATION.—Each registration under
21 this section shall expire at such time as the Commis-
22 sion may prescribe by rule or regulation.

23 “(4) RULES.—Except as provided in sub-
24 sections (c), (e), and (f), the Commission may pre-
25 scribe rules applicable to swap dealers and major

1 swap participants, including rules that limit the ac-
2 tivities of swap dealers and major swap participants.

3 “(5) TRANSITION.—Rules under this section
4 shall provide for the registration of swap dealers and
5 major swap participants not later than 1 year after
6 the date of enactment of the Wall Street Trans-
7 parency and Accountability Act of 2010.

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

19 “(c) DUAL REGISTRATION.—

20 “(1) SWAP DEALER.—Any person that is re-
21 quired to be registered as a swap dealer under this
22 section shall register with the Commission regardless
23 of whether the person also is a bank or is registered
24 with the Securities and Exchange Commission as a
25 security-based swap dealer.

1 “(2) MAJOR SWAP PARTICIPANT.—Any person
2 that is required to be registered as a major swap
3 participant under this section shall register with the
4 Commission regardless of whether the person also is
5 a bank or is registered with the Securities and Ex-
6 change Commission as a major security-based swap
7 participant.

8 “(d) RULEMAKINGS.—

9 “(1) IN GENERAL.—The Commission shall
10 adopt rules for persons that are registered as swap
11 dealers or major swap participants under this sec-
12 tion.

13 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
14 MENTS.—

15 “(A) IN GENERAL.—The Commission may
16 not prescribe rules imposing prudential require-
17 ments on swap dealers or major swap partici-
18 pants for which there is a prudential regulator.

19 “(B) APPLICABILITY.—Subparagraph (A)
20 does not limit the authority of the Commission
21 to prescribe appropriate business conduct, re-
22 porting, and recordkeeping requirements to pro-
23 tect investors.

24 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

25 “(1) GENERAL REQUIREMENTS.—

1 “(A) BANK SWAP DEALERS AND MAJOR
2 SWAP PARTICIPANTS.—Each registered swap
3 dealer and major swap participant for which
4 there is a prudential regulator shall meet such
5 minimum capital requirements and minimum
6 initial and variation margin requirements, in-
7 cluding the use of non cash collateral, as the
8 prudential regulators shall jointly prescribe by
9 rule or regulation that—

10 “(i) help ensure the safety and sound-
11 ness of the swap dealer and the major
12 swap participant; and

13 “(ii) are appropriate for the risk asso-
14 ciated with the uncleared swaps held as a
15 swap dealer or major swap participant and
16 the prudential regulators shall require sig-
17 nificantly higher capital for swaps that are
18 uncleared versus similar swaps that are
19 cleared through a derivatives clearing orga-
20 nization.

21 “(B) NONBANK SWAP DEALERS AND
22 MAJOR SWAP PARTICIPANTS.—Each registered
23 swap dealer and major swap participant for
24 which there is not a prudential regulator shall
25 meet such minimum capital requirements and

1 minimum initial and variation margin require-
2 ments, including the use of non cash collateral,
3 as the Commission shall prescribe by rule or
4 regulation that—

5 “(i) help ensure the safety and sound-
6 ness of the swap dealer and the major
7 swap participant; and

8 “(ii) are appropriate for the risk asso-
9 ciated with the uncleared swaps held as a
10 swap dealer or major swap participant and
11 the regulators shall require significantly
12 higher capital for swaps that are uncleared
13 versus similar swaps that are cleared
14 through a derivatives clearing organization.

15 “(C) APPLICABILITY WITH RESPECT TO
16 COUNTERPARTIES.—Subparagraphs (A) and
17 (B) shall not apply to initial and variation mar-
18 gin for swaps in which 1 of the counterparties
19 is not—

20 “(i) a swap dealer; or

21 “(ii) a major swap participant.

22 “(2) COMPARABILITY OF CAPITAL AND MARGIN
23 REQUIREMENTS.—

24 “(A) IN GENERAL.—The prudential regu-
25 lators, the Commission, and the Securities and

1 Exchange Commission shall periodically (but
2 not less frequently than annually) consult on
3 minimum capital requirements and minimum
4 initial and variation margin requirements.

5 “(B) COMPARABILITY.—The entities de-
6 scribed in subparagraph (A) shall, to the max-
7 imum extent practicable, establish and maintain
8 comparable minimum capital requirements and
9 minimum initial and variation margin require-
10 ments, including the use of non cash collateral,
11 for—

12 “(i) swap dealers; and

13 “(ii) major swap participants.

14 “(3) RULEMAKINGS.—

15 “(A) BANK SWAP DEALERS AND MAJOR
16 SWAP PARTICIPANTS.—Not later than 180 days
17 after the date of enactment of the Wall Street
18 Transparency and Accountability Act of 2010,
19 the prudential regulators, in consultation with
20 the Commission, shall adopt rules imposing
21 capital and margin requirements under this
22 subsection for swap dealers and major swap
23 participants for which there is a prudential reg-
24 ulator.

1 “(B) NONBANK SWAP DEALERS AND
2 MAJOR SWAP PARTICIPANTS.—The Commission,
3 in consultation with prudential regulators, shall
4 adopt rules imposing capital and margin re-
5 quirements under this subsection for swap deal-
6 ers and major swap participants for which there
7 is no prudential regulator.

8 “(f) REPORTING AND RECORDKEEPING.—

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

11 “(A) shall make such reports as are re-
12 quired by the Commission by rule or regulation
13 regarding the transactions and positions and fi-
14 nancial condition of the registered swap dealer
15 or major swap participant;

16 “(B)(i) for which there is a prudential reg-
17 ulator, shall keep books and records of all ac-
18 tivities related to the business as a swap dealer
19 or major swap participant in such form and
20 manner and for such period as may be pre-
21 scribed by the Commission by rule or regula-
22 tion; and

23 “(ii) for which there is no prudential regu-
24 lator, shall keep books and records in such form
25 and manner and for such period as may be pre-

1 scribed by the Commission by rule or regula-
2 tion; and

3 “(C) shall keep books and records de-
4 scribed in subparagraph (B) open to inspection
5 and examination by any representative of the
6 Commission.

7 “(2) RULES.—The Commission shall adopt
8 rules governing reporting and recordkeeping for
9 swap dealers and major swap participants.

10 “(g) DAILY TRADING RECORDS.—

11 “(1) IN GENERAL.—Each registered swap deal-
12 er and major swap participant shall maintain daily
13 trading records of the swaps of the registered swap
14 dealer and major swap participant and all related
15 records (including related cash or forward trans-
16 actions) and recorded communications, including
17 electronic mail, instant messages, and recordings of
18 telephone calls, for such period as may be required
19 by the Commission by rule or regulation.

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

23 “(3) CUSTOMER RECORDS.—Each registered
24 swap dealer and major swap participant shall main-
25 tain daily trading records for each customer or

1 counterparty in a manner and form that is identifi-
2 able with each swap transaction.

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

7 “(5) RULES.—The Commission shall adopt
8 rules governing daily trading records for swap deal-
9 ers and major swap participants.

10 “(h) BUSINESS CONDUCT STANDARDS.—

11 “(1) IN GENERAL.—Each registered swap deal-
12 er and major swap participant shall conform with
13 such business conduct standards as may be pre-
14 scribed by the Commission by rule or regulation that
15 relate to—

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

19 “(B) diligent supervision of the business of
20 the registered swap dealer and major swap par-
21 ticipant;

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

24 “(D) such other matters as the Commis-
25 sion determines to be appropriate.

1 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
2 CERTAIN ENTITIES.—

3 “(A) GOVERNMENTAL ENTITIES.—A swap
4 dealer that provides advice regarding, or offers
5 to enter into, or enters into a swap with a
6 State, State agency, city, county, municipality,
7 or other political subdivision or a Federal agen-
8 cy shall have a fiduciary duty to the State,
9 State agency, city, county, municipality, or
10 other political subdivision, or the Federal agen-
11 cy as appropriate.

12 “(B) PENSION PLANS; ENDOWMENTS; RE-
13 TIREMENT PLANS.—A swap dealer that pro-
14 vides advice regarding, or offers to enter into,
15 or enters into a swap with a pension plan, en-
16 dowment, or retirement plan shall have a fidu-
17 ciary duty to the pension plan, endowment, or
18 retirement plan, as appropriate.

19 “(3) BUSINESS CONDUCT REQUIREMENTS.—
20 Business conduct requirements adopted by the Com-
21 mission shall—

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

1 “(B) require disclosure by the swap dealer
2 or major swap participant to any counterparty
3 to the transaction (other than a swap dealer,
4 major swap participant, security-based swap
5 dealer, or major security-based swap partici-
6 pant) of—

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

9 “(ii) the source and amount of any
10 fees or other material remuneration that
11 the swap dealer or major swap participant
12 would directly or indirectly expect to re-
13 ceive in connection with the swap;

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

18 “(iv)(I) for cleared swaps, upon the
19 request of the counterparty, the daily mark
20 from the appropriate derivatives clearing
21 organization; and

22 “(II) for uncleared swaps, the daily
23 mark of the swap dealer or the major swap
24 participant; and

1 “(C) establish such other standards and
2 requirements as the Commission may determine
3 are appropriate in the public interest, for the
4 protection of investors, or otherwise in further-
5 ance of the purposes of this Act.

6 “(4) RULES.—The Commission shall prescribe
7 rules under this subsection governing business con-
8 duct standards for swap dealers and major swap
9 participants.

10 “(i) DOCUMENTATION AND BACK OFFICE STAND-
11 ARDS.—

12 “(1) IN GENERAL.—Each registered swap deal-
13 er and major swap participant shall conform with
14 such standards as may be prescribed by the Com-
15 mission by rule or regulation that relate to timely
16 and accurate confirmation, processing, netting, docu-
17 mentation, and valuation of all swaps.

18 “(2) RULES.—The Commission shall adopt
19 rules governing documentation and back office
20 standards for swap dealers and major swap partici-
21 pants.

22 “(j) DUTIES.—Each registered swap dealer and
23 major swap participant at all times shall comply with the
24 following requirements:

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

5 “(2) RISK MANAGEMENT PROCEDURES.—The
6 swap dealer or major swap participant shall estab-
7 lish robust and professional risk management sys-
8 tems adequate for managing the day-to-day business
9 of the swap dealer or major swap participant.

10 “(3) DISCLOSURE OF GENERAL INFORMA-
11 TION.—The swap dealer or major swap participant
12 shall disclose to the Commission and to the pruden-
13 tial regulator for the swap dealer or major swap par-
14 ticipant, as applicable, information concerning—

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

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

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

20 “(D) other information relevant to its trad-
21 ing in swaps.

22 “(4) ABILITY TO OBTAIN INFORMATION.—The
23 swap dealer or major swap participant shall—

24 “(A) establish and enforce internal systems
25 and procedures to obtain any necessary infor-

1 mation to perform any of the functions de-
2 scribed in this section; and

3 “(B) provide the information to the Com-
4 mission and to the prudential regulator for the
5 swap dealer or major swap participant, as ap-
6 plicable, on request.

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

10 “(A) establish structural and institutional
11 safeguards to ensure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any com-
14 modity or swap or acting in a role of providing
15 clearing activities or making determinations as
16 to accepting clearing customers are separated
17 by appropriate informational partitions within
18 the firm from the review, pressure, or oversight
19 of persons whose involvement in pricing, trad-
20 ing, or clearing activities might potentially bias
21 their judgment or supervision and contravene
22 the core principles of open access and the busi-
23 ness conduct standards described in this Act;
24 and

1 “(B) address such other issues as the
2 Commission determines to be appropriate.

3 “(6) ANTITRUST CONSIDERATIONS.—Unless
4 specifically reviewed and approved by the Commis-
5 sion for antitrust purposes, the swap dealer or major
6 swap participant shall not—

7 “(A) adopt any process or take any action
8 that results in any unreasonable restraint of
9 trade; or

10 “(B) impose any material anticompetitive
11 burden on trading or clearing.

12 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
13 CER.—

14 “(1) IN GENERAL.—Each swap dealer and
15 major swap participant shall designate an individual
16 to serve as a chief compliance officer.

17 “(2) DUTIES.—The chief compliance officer
18 shall—

19 “(A) report directly to the board or to the
20 senior officer of the swap dealer or major swap
21 participant;

22 “(B) review the compliance of the swap
23 dealer or major swap participant with respect to
24 the swap dealer and major swap participant re-
25 quirements described in this section;

1 “(C) in consultation with the board of di-
2 rectors, a body performing a function similar to
3 the board, or the senior officer of the organiza-
4 tion, resolve any conflicts of interest that may
5 arise;

6 “(D) be responsible for administering each
7 policy and procedure that is required to be es-
8 tablished pursuant to this section;

9 “(E) ensure compliance with this Act (in-
10 cluding regulations) relating to swaps, including
11 each rule prescribed by the Commission under
12 this section;

13 “(F) establish procedures for the remedi-
14 ation of noncompliance issues identified by the
15 chief compliance officer through any—

16 “(i) compliance office review;

17 “(ii) look-back;

18 “(iii) internal or external audit find-
19 ing;

20 “(iv) self-reported error; or

21 “(v) validated complaint; and

22 “(G) establish and follow appropriate pro-
23 cedures for the handling, management response,
24 remediation, retesting, and closing of non-
25 compliance issues.

1 “(3) ANNUAL REPORTS.—

2 “(A) IN GENERAL.—In accordance with
3 rules prescribed by the Commission, the chief
4 compliance officer shall annually prepare and
5 sign a report that contains a description of—

6 “(i) the compliance of the swap dealer
7 or major swap participant with respect to
8 this Act (including regulations); and

9 “(ii) each policy and procedure of the
10 swap dealer or major swap participant of
11 the chief compliance officer (including the
12 code of ethics and conflict of interest poli-
13 cies).

14 “(B) REQUIREMENTS.—A compliance re-
15 port under subparagraph (A) shall—

16 “(i) accompany each appropriate fi-
17 nancial report of the swap dealer or major
18 swap participant that is required to be fur-
19 nished to the Commission pursuant to this
20 section; and

21 “(ii) include a certification that, under
22 penalty of law, the compliance report is ac-
23 curate and complete.”.

1 **SEC. 121. CONFLICTS OF INTEREST.**

2 Section 4d of the Commodity Exchange Act (7 U.S.C.
3 6d) is amended—

4 (1) by redesignating subsection (c) as sub-
5 section (e); and

6 (2) by inserting after subsection (b) the fol-
7 lowing:

8 “(c) CONFLICTS OF INTEREST.—The Commission
9 shall require that futures commission merchants and in-
10 troducing brokers implement conflict-of-interest systems
11 and procedures that—

12 “(1) establish structural and institutional safe-
13 guards to ensure that the activities of any person
14 within the firm relating to research or analysis of
15 the price or market for any commodity are separated
16 by appropriate informational partitions within the
17 firm from the review, pressure, or oversight of per-
18 sons whose involvement in trading or clearing activi-
19 ties might potentially bias the judgment or super-
20 vision of the persons; and

21 “(2) address such other issues as the Commis-
22 sion determines to be appropriate.

23 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
24 CER.—

1 “(1) IN GENERAL.—Each futures commission
2 merchant shall designate an individual to serve as a
3 chief compliance officer.

4 “(2) DUTIES.—The chief compliance officer
5 shall—

6 “(A) report directly to the board or to the
7 senior officer of the futures commission mer-
8 chant;

9 “(B) review the compliance of the futures
10 commission merchant with respect to require-
11 ments described in this section;

12 “(C) in consultation with the board of di-
13 rectors, a body performing a function similar to
14 the board, or the senior officer of the organiza-
15 tion, resolve any conflicts of interest that may
16 arise;

17 “(D) be responsible for administering each
18 policy and procedure that is required to be es-
19 tablished pursuant to this section;

20 “(E) ensure compliance with this Act (in-
21 cluding regulations and each rule prescribed by
22 the Commission under this section) relating,
23 but not limited, to—

24 “(i) contracts of sale of a commodity
25 for future delivery;

1 “(ii) options on the contracts de-
2 scribed in clause (i);

3 “(iii) commodity options;

4 “(iv) retail commodity transactions;

5 “(v) security futures products;

6 “(vi) leverage contracts; and

7 “(vii) swaps;

8 “(F) establish procedures for the remedi-
9 ation of noncompliance issues identified by the
10 chief compliance officer through any—

11 “(i) compliance office review;

12 “(ii) look-back;

13 “(iii) internal or external audit find-
14 ing;

15 “(iv) self-reported error; or

16 “(v) validated complaint; and

17 “(G) establish and follow appropriate pro-
18 cedures for the handling, management response,
19 remediation, retesting, and closing of non-
20 compliance issues.

21 “(3) ANNUAL REPORTS.—

22 “(A) IN GENERAL.—In accordance with
23 rules prescribed by the Commission, the chief
24 compliance officer shall annually prepare and
25 sign a report that contains a description of—

1 “(i) the compliance of the futures
2 commission merchant with respect to this
3 Act (including regulations); and

4 “(ii) each policy and procedure of the
5 futures commission merchant of the chief
6 compliance officer (including the code of
7 ethics and conflict of interest policies).

8 “(B) REQUIREMENTS.—A compliance re-
9 port under subparagraph (A) shall—

10 “(i) accompany each appropriate fi-
11 nancial report of the futures commission
12 merchant that is required to be furnished
13 to the Commission pursuant to this sec-
14 tion; and

15 “(ii) include a certification that, under
16 penalty of law, the compliance report is ac-
17 curate and complete.”.

18 **SEC. 122. SWAP EXECUTION FACILITIES.**

19 The Commodity Exchange Act is amended by insert-
20 ing after section 5g (7 U.S.C. 7b-2) the following:

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

22 “(a) REGISTRATION.—

23 “(1) IN GENERAL.—No person may operate a
24 facility for the trading or processing of swaps unless
25 the facility is registered as a swap execution facility

1 or as a designated contract market under this sec-
2 tion.

3 “(2) DUAL REGISTRATION.—Any person that is
4 registered as a swap execution facility under this
5 section shall register with the Commission regardless
6 of whether the person also is registered with the Se-
7 curities and Exchange Commission as a swap execu-
8 tion facility.

9 “(b) TRADING AND TRADE PROCESSING.—A swap
10 execution facility that is registered under subsection (a)
11 may—

12 “(1) make available for trading any swap; and

13 “(2) facilitate trade processing of any swap.

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

22 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
23 CILITIES.—

24 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

1 “(A) IN GENERAL.—To be registered, and
2 maintain registration, as a swap execution facil-
3 ity, the swap execution facility shall comply
4 with—

5 “(i) the core principles described in
6 this subsection; and

7 “(ii) any requirement that the Com-
8 mission may impose by rule or regulation
9 pursuant to section 8a(5).

10 “(B) REASONABLE DISCRETION OF SWAP
11 EXECUTION FACILITY.—Unless otherwise deter-
12 mined by the Commission by rule or regulation,
13 a swap execution facility described in subpara-
14 graph (A) shall have reasonable discretion in
15 establishing the manner in which the swap exe-
16 cution facility complies with the core principles
17 described in this subsection.

18 “(2) COMPLIANCE WITH RULES.—A swap exe-
19 cution facility shall—

20 “(A) monitor and enforce compliance with
21 any rule of the swap execution facility, includ-
22 ing—

23 “(i) the terms and conditions of the
24 swaps traded or processed on or through
25 the swap execution facility; and

1 “(ii) any limitation on access to the
2 swap execution facility; and

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

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

10 “(ii) to capture information that may
11 be used in establishing whether rule viola-
12 tions have occurred.

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

17 “(4) MONITORING OF TRADING AND TRADE
18 PROCESSING.—The swap execution facility shall—

19 “(A) establish and enforce rules or terms
20 and conditions defining, or specifications detail-
21 ing—

22 “(i) trading procedures to be used in
23 entering and executing orders traded on or
24 through the facilities of the swap execution
25 facility; and

1 “(ii) procedures for trade processing
2 of swaps on or through the facilities of the
3 swap execution facility; and

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

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

14 “(A) establish and enforce rules that will
15 allow the facility to obtain any necessary infor-
16 mation to perform any of the functions de-
17 scribed in this section;

18 “(B) provide the information to the Com-
19 mission on request; and

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

23 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

24 “(A) IN GENERAL.—To reduce the poten-
25 tial threat of market manipulation or conges-

1 tion, especially during trading in the delivery
2 month, the swap execution facility shall adopt
3 for each of the contracts of the facility, as is
4 necessary and appropriate, position limitations
5 or position accountability for speculators.

6 “(B) POSITION LIMITS.—For any contract
7 that is subject to a position limitation estab-
8 lished by the Commission pursuant to section
9 4a(a), the swap execution facility shall set its
10 position limitation at a level no higher than the
11 Commission limitation.

12 “(C) POSITION ENFORCEMENT.—For any
13 contract that is subject to a position limitation
14 established by the Commission pursuant to sec-
15 tion 4a(a), a swap execution facility shall reject
16 any proposed swap transaction if, based on in-
17 formation readily available to a swap execution
18 facility, any proposed swap transaction would
19 cause a swap execution facility customer that
20 would be a party to such swap transaction to
21 exceed such position limitation.

22 “(7) FINANCIAL INTEGRITY OF TRANS-
23 ACTIONS.—The swap execution facility shall estab-
24 lish and enforce rules and procedures for ensuring
25 the financial integrity of swaps entered on or

1 through the facilities of the swap execution facility,
2 including the clearance and settlement of the swaps
3 pursuant to section 2(h)(1).

4 “(8) EMERGENCY AUTHORITY.—The swap exe-
5 cution facility shall adopt rules to provide for the ex-
6 ercise of emergency authority, in consultation or co-
7 operation with the Commission, as is necessary and
8 appropriate, including the authority to liquidate or
9 transfer open positions in any swap or to suspend or
10 curtail trading in a swap.

11 “(9) TIMELY PUBLICATION OF TRADING INFOR-
12 MATION.—

13 “(A) IN GENERAL.—The swap execution
14 facility shall make public timely information on
15 price, trading volume, and other trading data
16 on swaps to the extent prescribed by the Com-
17 mission.

18 “(B) CAPACITY OF SWAP EXECUTION FA-
19 CILITY.—The swap execution facility shall be
20 required to have the capacity to electronically
21 capture trade information with respect to trans-
22 actions executed on the facility.

23 “(10) RECORDKEEPING AND REPORTING.—

24 “(A) IN GENERAL.—A swap execution fa-
25 cility shall—

1 “(i) maintain records of all activities
2 relating to the business of the facility, in-
3 cluding a complete audit trail, in a form
4 and manner acceptable to the Commission
5 for a period of 5 years; and

6 “(ii) report to the Commission, in a
7 form and manner acceptable to the Com-
8 mission, such information as the Commis-
9 sion determines to be necessary or appro-
10 priate for the Commission to perform the
11 duties of the Commission under this Act.

12 “(B) REQUIREMENTS.—The Commission
13 shall adopt data collection and reporting re-
14 quirements for swap execution facilities that are
15 comparable to corresponding requirements for
16 derivatives clearing organizations and swap
17 data repositories.

18 “(11) ANTITRUST CONSIDERATIONS.—Unless
19 necessary or appropriate to achieve the purposes of
20 this Act, the swap execution facility shall avoid—

21 “(A) adopting any rules or taking any ac-
22 tions that result in any unreasonable restraint
23 of trade; or

24 “(B) imposing any material anticompeti-
25 tive burden on trading or clearing.

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

3 “(A) establish and enforce rules to mini-
4 mize conflicts of interest in its decisionmaking
5 process; and

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

8 “(13) FINANCIAL RESOURCES.—

9 “(A) IN GENERAL.—The swap execution
10 facility shall have adequate financial, oper-
11 ational, and managerial resources to discharge
12 each responsibility of the swap execution facil-
13 ity.

14 “(B) DETERMINATION OF RESOURCE ADE-
15 QUACY.—The financial resources of a swap exe-
16 cution facility shall be considered to be ade-
17 quate if the value of the financial resources ex-
18 ceeds the total amount that would enable the
19 swap execution facility to cover the operating
20 costs of the swap execution facility for a 1-year
21 period, as calculated on a rolling basis.

22 “(14) SYSTEM SAFEGUARDS.—The swap execu-
23 tion facility shall—

24 “(A) establish and maintain a program of
25 risk analysis and oversight to identify and mini-

1 mize sources of operational risk, through the
2 development of appropriate controls and proce-
3 dures, and automated systems, that—

4 “(i) are reliable and secure; and

5 “(ii) have adequate scalable capacity;

6 “(B) establish and maintain emergency
7 procedures, backup facilities, and a plan for dis-
8 aster recovery that are designed to allow for—

9 “(i) the timely recovery and resump-
10 tion of operations; and

11 “(ii) the fulfillment of the responsibil-
12 ities and obligation of the swap execution
13 facility; and

14 “(C) periodically conduct tests to verify
15 that the backup resources of the swap execution
16 facility are sufficient to ensure continued—

17 “(i) order processing and trade
18 matching;

19 “(ii) price reporting;

20 “(iii) market surveillance and

21 “(iv) maintenance of a comprehensive
22 and accurate audit trail.

23 “(15) DESIGNATION OF CHIEF COMPLIANCE
24 OFFICER.—

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

4 “(B) DUTIES.—The chief compliance offi-
5 cer shall—

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

8 “(ii) review compliance with the core
9 principles in this subsection;

10 “(iii) in consultation with the board of
11 the facility, a body performing a function
12 similar to that of a board, or the senior of-
13 ficer of the facility, resolve any conflicts of
14 interest that may arise;

15 “(iv) be responsible for establishing
16 and administering the policies and proce-
17 dures required to be established pursuant
18 to this section;

19 “(v) ensure compliance with this Act
20 and the rules and regulations issued under
21 this Act, including rules prescribed by the
22 Commission pursuant to this section; and

23 “(vi) establish procedures for the re-
24 mediation of noncompliance issues found
25 during compliance office reviews, look

1 backs, internal or external audit findings,
2 self-reported errors, or through validated
3 complaints.

4 “(C) REQUIREMENTS FOR PROCEDURES.—
5 In establishing procedures under subparagraph
6 (B)(vi), the chief compliance officer shall design
7 the procedures to establish the handling, man-
8 agement response, remediation, retesting, and
9 closing of noncompliance issues.

10 “(D) ANNUAL REPORTS.—

11 “(i) IN GENERAL.—In accordance
12 with rules prescribed by the Commission,
13 the chief compliance officer shall annually
14 prepare and sign a report that contains a
15 description of—

16 “(I) the compliance of the swap
17 execution facility with this Act; and

18 “(II) the policies and procedures,
19 including the code of ethics and con-
20 flict of interest policies, of the swap
21 execution facility.

22 “(ii) REQUIREMENTS.—The chief
23 compliance officer shall—

24 “(I) submit each report described
25 in clause (i) with the appropriate fi-

1 nancial report of the swap execution
2 facility that is required to be sub-
3 mitted to the Commission pursuant to
4 this section; and

5 “(II) include in the report a cer-
6 tification that, under penalty of law,
7 the report is accurate and complete.

8 “(e) EXEMPTIONS.—The Commission may exempt,
9 conditionally or unconditionally, a swap execution facility
10 from registration under this section if the Commission
11 finds that the facility is subject to comparable, comprehen-
12 sive supervision and regulation on a consolidated basis by
13 the Securities and Exchange Commission, a prudential
14 regulator, or the appropriate governmental authorities in
15 the home country of the facility.

16 “(f) RULES.—The Commission shall prescribe rules
17 governing the regulation of alternative swap execution fa-
18 cilities under this section.”.

19 **SEC. 123. DERIVATIVES TRANSACTION EXECUTION FACILI-**
20 **TIES AND EXEMPT BOARDS OF TRADE.**

21 (a) IN GENERAL.—Sections 5a and 5d of the Com-
22 modity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

23 (b) CONFORMING AMENDMENTS.—

24 (1) Section 2 of the Commodity Exchange Act
25 (7 U.S.C. 2) is amended—

1 (A) in subsection (a)(1)(A), in the first
2 sentence, by striking “or 5a”; and

3 (B) in paragraph (2) of subsection (g) (as
4 redesignated by section 113(a)(1)(B)), by strik-
5 ing “section 5a of this Act” and all that follows
6 through “5d of this Act” and inserting “section
7 5b of this Act”.

8 (2) Section 6(g)(1)(A) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is
10 amended—

11 (A) by striking “that—” and all that fol-
12 lows through “(i) has been designated” and in-
13 serting “that has been designated”;

14 (B) by striking “; or” and inserting “;
15 and” and

16 (C) by striking clause (ii).

17 **SEC. 124. DESIGNATED CONTRACT MARKETS.**

18 (a) CRITERIA FOR DESIGNATION.—Section 5 of the
19 Commodity Exchange Act (7 U.S.C. 7) is amended by
20 striking subsection (b).

21 (b) CORE PRINCIPLES FOR CONTRACT MARKETS.—
22 Section 5 of the Commodity Exchange Act (7 U.S.C. 7)
23 is amended by striking subsection (d) and inserting the
24 following:

25 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

1 “(1) DESIGNATION AS CONTRACT MARKET.—

2 “(A) IN GENERAL.—To be designated, and
3 maintain a designation, as a contract market, a
4 board of trade shall comply with—

5 “(i) any core principle described in
6 this subsection; and

7 “(ii) any requirement that the Com-
8 mission may impose by rule or regulation
9 pursuant to section 8a(5).

10 “(B) REASONABLE DISCRETION OF CON-
11 TRACT MARKET.—Unless otherwise determined
12 by the Commission by rule or regulation, a
13 board of trade described in subparagraph (A)
14 shall have reasonable discretion in establishing
15 the manner in which the board of trade com-
16 plies with the core principles described in this
17 subsection.

18 “(2) COMPLIANCE WITH RULES.—

19 “(A) IN GENERAL.—The board of trade
20 shall establish, monitor, and enforce compliance
21 with the rules of the contract market, includ-
22 ing—

23 “(i) access requirements;

1 “(ii) the terms and conditions of any
2 contracts to be traded on the contract mar-
3 ket; and

4 “(iii) rules prohibiting abusive trade
5 practices on the contract market.

6 “(B) CAPACITY OF CONTRACT MARKET.—
7 The board of trade shall have the capacity to
8 detect, investigate, and apply appropriate sanc-
9 tions to any person that violates any rule of the
10 contract market.

11 “(C) REQUIREMENT OF RULES.—The rules
12 of the contract market shall provide the board
13 of trade with the ability and authority to obtain
14 any necessary information to perform any func-
15 tion described in this subsection, including the
16 capacity to carry out such international infor-
17 mation-sharing agreements as the Commission
18 may require.

19 “(3) CONTRACTS NOT READILY SUBJECT TO
20 MANIPULATION.—The board of trade shall list on
21 the contract market only contracts that are not
22 readily susceptible to manipulation.

23 “(4) PREVENTION OF MARKET DISRUPTION.—
24 The board of trade shall have the capacity and re-
25 sponsibility to prevent manipulation, price distortion,

1 and disruptions of the delivery or cash-settlement
2 process through market surveillance, compliance,
3 and enforcement practices and procedures, includ-
4 ing—

5 “(A) methods for conducting real-time
6 monitoring of trading; and

7 “(B) comprehensive and accurate trade re-
8 constructions.

9 “(5) POSITION LIMITATIONS OR ACCOUNT-
10 ABILITY.—

11 “(A) IN GENERAL.—To reduce the poten-
12 tial threat of market manipulation or conges-
13 tion (especially during trading in the delivery
14 month), the board of trade shall adopt for each
15 contract of the board of trade, as is necessary
16 and appropriate, position limitations or position
17 accountability for speculators.

18 “(B) MAXIMUM ALLOWABLE POSITION
19 LIMITATION.—For any contract that is subject
20 to a position limitation established by the Com-
21 mission pursuant to section 4a(a), the board of
22 trade shall set the position limitation of the
23 board of trade at a level not higher than the po-
24 sition limitation established by the Commission.

1 “(6) EMERGENCY AUTHORITY.—The board of
2 trade, in consultation or cooperation with the Com-
3 mission, shall adopt rules to provide for the exercise
4 of emergency authority, as is necessary and appro-
5 priate, including the authority—

6 “(A) to liquidate or transfer open positions
7 in any contract;

8 “(B) to suspend or curtail trading in any
9 contract; and

10 “(C) to require market participants in any
11 contract to meet special margin requirements.

12 “(7) AVAILABILITY OF GENERAL INFORMA-
13 TION.—The board of trade shall make available to
14 market authorities, market participants, and the
15 public accurate information concerning—

16 “(A) the terms and conditions of the con-
17 tracts of the contract market; and

18 “(B)(i) the rules, regulations, and mecha-
19 nisms for executing transactions on or through
20 the facilities of the contract market; and

21 “(ii) the rules and specifications describing
22 the operation of the contract market’s—

23 “(I) electronic matching platform; or

24 “(II) trade execution facility.

1 “(8) DAILY PUBLICATION OF TRADING INFOR-
2 MATION.—The board of trade shall make public
3 daily information on settlement prices, volume, open
4 interest, and opening and closing ranges for actively
5 traded contracts on the contract market.

6 “(9) EXECUTION OF TRANSACTIONS.—

7 “(A) IN GENERAL.—The board of trade
8 shall provide a competitive, open, and efficient
9 market and mechanism for executing trans-
10 actions that protects the price discovery process
11 of trading in the centralized market of the
12 board of trade.

13 “(B) RULES.—The rules of the board of
14 trade may authorize, for bona fide business
15 purposes—

16 “(i) transfer trades or office trades;

17 “(ii) an exchange of—

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

20 “(II) futures for cash commod-
21 ities; or

22 “(III) futures for swaps; or

23 “(iii) a futures commission merchant,
24 acting as principal or agent, to enter into
25 or confirm the execution of a contract for

1 “(I) futures commission mer-
2 chant; and

3 “(II) introducing broker; and

4 “(ii) the protection of customer funds.

5 “(12) PROTECTION OF MARKETS AND MARKET
6 PARTICIPANTS.—The board of trade shall establish
7 and enforce rules—

8 “(A) to protect markets and market par-
9 ticipants from abusive practices committed by
10 any party, including abusive practices com-
11 mitted by a party acting as an agent for a par-
12 ticipant; and

13 “(B) to promote fair and equitable trading
14 on the contract market.

15 “(13) DISCIPLINARY PROCEDURES.—The board
16 of trade shall establish and enforce disciplinary pro-
17 cedures that authorize the board of trade to dis-
18 cipline, suspend, or expel members or market par-
19 ticipants that violate the rules of the board of trade,
20 or similar methods for performing the same func-
21 tions, including delegation of the functions to third
22 parties.

23 “(14) DISPUTE RESOLUTION.—The board of
24 trade shall establish and enforce rules regarding,
25 and provide facilities for alternative dispute resolu-

1 tion as appropriate for, market participants and any
2 market intermediaries.

3 “(15) GOVERNANCE FITNESS STANDARDS.—
4 The board of trade shall establish and enforce ap-
5 propriate fitness standards for directors, members of
6 any disciplinary committee, members of the contract
7 market, and any other person with direct access to
8 the facility (including any party affiliated with any
9 person described in this paragraph).

10 “(16) CONFLICTS OF INTEREST.—The board of
11 trade shall establish and enforce rules—

12 “(A) to minimize conflicts of interest in
13 the decisionmaking process of the contract mar-
14 ket; and

15 “(B) to establish a process for resolving
16 conflicts of interest described in subparagraph
17 (A).

18 “(17) COMPOSITION OF GOVERNING BOARDS OF
19 CONTRACT MARKETS.—The governance arrange-
20 ments of the board of trade shall be designed to pro-
21 mote the objectives of market participants.

22 “(18) RECORDKEEPING.—The board of trade
23 shall maintain records of all activities relating to the
24 business of the contract market—

1 “(A) in a form and manner that is accept-
2 able to the Commission; and

3 “(B) for a period of at least 5 years.

4 “(19) ANTITRUST CONSIDERATIONS.—Unless
5 appropriate to achieve the purposes of this Act, the
6 board of trade shall, to the maximum extent prac-
7 ticable, avoid—

8 “(A) adopting any rule or taking any ac-
9 tion that results in any unreasonable restraint
10 of trade; or

11 “(B) imposing any material anticompeti-
12 tive burden on trading on the contract market.

13 “(20) SYSTEM SAFEGUARDS.—The board of
14 trade shall—

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

22 “(B) establish and maintain emergency
23 procedures, backup facilities, and a plan for dis-
24 aster recovery that allow for the timely recovery
25 and resumption of operations and the fulfill-

1 ment of the responsibilities and obligations of
2 the board of trade; and

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

9 “(21) FINANCIAL RESOURCES.—

10 “(A) IN GENERAL.—The board of trade
11 shall have adequate financial, operational, and
12 managerial resources to discharge each respon-
13 sibility of the board of trade.

14 “(B) DETERMINATION OF ADEQUACY.—
15 The financial resources of the board of trade
16 shall be considered to be adequate if the value
17 of the financial resources exceeds the total
18 amount that would enable the contract market
19 to cover the operating costs of the contract
20 market for a 1-year period, as calculated on a
21 rolling basis.”.

22 **SEC. 125. MARGIN.**

23 Section 8a(7) of the Commodity Exchange Act (7
24 U.S.C. 12a(7)) is amended—

1 (1) in subparagraph (C), by striking “, except-
2 ing the setting of levels of margin”;

3 (2) by redesignating subparagraphs (D)
4 through (F) as subparagraphs (E) through (G), re-
5 spectively; and

6 (3) by inserting after subparagraph (C) the fol-
7 lowing:

8 “(D) margin requirements, provided that
9 the rules, regulations, or orders shall—

10 “(i) be limited to protecting the finan-
11 cial integrity of the derivatives clearing or-
12 ganization;

13 “(ii) be designed for risk management
14 purposes to protect the financial integrity
15 of transactions; and

16 “(iii) not set specific margin
17 amounts;”.

18 **SEC. 126. POSITION LIMITS.**

19 (a) **AGGREGATE POSITION LIMITS.**—Section 4a(a) of
20 the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-
21 ed—

22 (1) by inserting after “(a)” the following:

23 “(1) **IN GENERAL.**—”;

24 (2) in the first sentence, by striking “on elec-
25 tronic trading facilities with respect to a significant

1 price discovery contract” and inserting “swaps that
2 perform or affect a significant price discovery func-
3 tion with respect to registered entities”;

4 (3) in the second sentence—

5 (A) by inserting “, including any group or
6 class of traders,” after “held by any person”;
7 and

8 (B) by striking “on an electronic trading
9 facility with respect to a significant price dis-
10 covery contract,” and inserting “swaps traded
11 on or subject to the rules of an swaps execution
12 facility, or swaps not traded on or subject to
13 the rules of an swaps execution facility that
14 perform a significant price discovery function
15 with respect to a registered entity,”; and

16 (4) by adding at the end the following:

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

1 “(A) contracts listed by designated con-
2 tract markets;

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

13 “(C) swaps traded on or subject to the
14 rules of a swap execution facility; and

15 “(D) swaps not traded on or subject to the
16 rules of a swap execution facility that perform
17 or affect a significant price discovery function
18 with respect to a registered entity.

19 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
20 TION.—In making a determination as to whether a
21 swap performs or affects a significant price dis-
22 covery function with respect to registered entities,
23 the Commission shall consider, as appropriate, the
24 following factors:

1 “(A) PRICE LINKAGE.—The extent to
2 which the swap uses or otherwise relies on a
3 daily or final settlement price, or other major
4 price parameter, of another contract traded on
5 a registered entity based on the same under-
6 lying commodity, to value a position, transfer or
7 convert a position, financially settle a position,
8 or close out a position.

9 “(B) ARBITRAGE.—The extent to which
10 the price for the swap is sufficiently related to
11 the price of another contract traded on a reg-
12 istered entity based on the same underlying
13 commodity so as to permit market participants
14 to effectively arbitrage between the markets by
15 simultaneously maintaining positions or exe-
16 cuting trades in the swaps on a frequent and
17 recurring basis.

18 “(C) MATERIAL PRICE REFERENCE.—The
19 extent to which, on a frequent and recurring
20 basis, bids, offers, or transactions in a contract
21 traded on a registered entity are directly based
22 on, or are determined by referencing, the price
23 generated by the swap.

24 “(D) MATERIAL LIQUIDITY.—The extent
25 to which the volume of swaps being traded in

1 the commodity is sufficient to have a material
2 effect on another contract traded on a reg-
3 istered entity.

4 “(E) OTHER MATERIAL FACTORS.—Such
5 other material factors as the Commission speci-
6 fies by rule or regulation as relevant to deter-
7 mine whether a swap serves a significant price
8 discovery function with respect to a regulated
9 market.

10 “(4) EXEMPTIONS.—The Commission, by rule,
11 regulation, or order, may exempt, conditionally or
12 unconditionally, any person or class of persons, any
13 swap or class of swaps, or any transaction or class
14 of transactions from any requirement that the Com-
15 mission establishes under this section with respect to
16 position limits.”.

17 (b) CONFORMING AMENDMENTS.—Section 4a(b) of
18 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
19 ed—

20 (1) in paragraph (1), by striking “or derivatives
21 transaction execution facility or facilities or elec-
22 tronic trading facility” and inserting “or swap exe-
23 cution facility or facilities”; and

24 (2) in paragraph (2), by striking “or derivatives
25 transaction execution facility or facilities or elec-

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

3 **SEC. 127. FOREIGN BOARDS OF TRADE.**

4 (a) IN GENERAL.—Section 4(b) of the Commodity
5 Exchange Act (7 U.S.C. 6(b)) is amended—

6 (1) in the first sentence, by striking “The Com-
7 mission” and inserting the following:

8 “(2) PERSONS LOCATED IN THE UNITED
9 STATES.—

10 “(A) IN GENERAL.—The Commission”;

11 (2) in the second sentence, by striking “Such
12 rules and regulations” and inserting the following:

13 “(B) DIFFERENT REQUIREMENTS.—Rules
14 and regulations described in subparagraph
15 (A)”;

16 (3) in the third sentence—

17 (A) by striking “No rule or regulation”
18 and inserting the following:

19 “(C) PROHIBITION.—Except as provided in
20 paragraphs (1) and (2), no rule or regulation”;

21 (B) by striking “that (1) requires” and in-
22 serting the following: “that—

23 “(i) requires”; and

24 (C) by striking “market, or (2) governs”
25 and inserting the following: “market; or

1 “(ii) governs”; and

2 (4) by inserting before paragraph (2) (as des-
3 ignated by paragraph (1)) the following:

4 “(1) FOREIGN BOARDS OF TRADE.—

5 “(A) IN GENERAL.—It shall be unlawful
6 for a foreign board of trade to provide to the
7 members of the foreign board of trade or other
8 participants located in the United States direct
9 access to the electronic trading and order-
10 matching system of the foreign board of trade
11 with respect to an agreement, contract, or
12 transaction that settles against any price (in-
13 cluding the daily or final settlement price) of 1
14 or more contracts listed for trading on a reg-
15 istered entity, unless the Commission deter-
16 mines that—

17 “(i) the foreign board of trade makes
18 public daily trading information regarding
19 the agreement, contract, or transaction
20 that is comparable to the daily trading in-
21 formation published by the registered enti-
22 ty for the 1 or more contracts against
23 which the agreement, contract, or trans-
24 action traded on the foreign board of trade
25 settles; and

1 “(ii) the foreign board of trade (or the
2 foreign futures authority that oversees the
3 foreign board of trade)—

4 “(I) adopts position limits (in-
5 cluding related hedge exemption provi-
6 sions) for the agreement, contract, or
7 transaction that are comparable to the
8 position limits (including related
9 hedge exemption provisions) adopted
10 by the registered entity for the 1 or
11 more contracts against which the
12 agreement, contract, or transaction
13 traded on the foreign board of trade
14 settles;

15 “(II) has the authority to require
16 or direct market participants to limit,
17 reduce, or liquidate any position the
18 foreign board of trade (or the foreign
19 futures authority that oversees the
20 foreign board of trade) determines to
21 be necessary to prevent or reduce the
22 threat of price manipulation, excessive
23 speculation as described in section 4a,
24 price distortion, or disruption of deliv-
25 ery or the cash settlement process;

1 “(III) agrees to promptly notify
2 the Commission, with regard to the
3 agreement, contract, or transaction
4 that settles against any price (includ-
5 ing the daily or final settlement price)
6 of 1 or more contracts listed for trad-
7 ing on a registered entity, of any
8 change regarding—

9 “(aa) the information that
10 the foreign board of trade will
11 make publicly available;

12 “(bb) the position limits
13 that the foreign board of trade or
14 foreign futures authority will
15 adopt and enforce;

16 “(cc) the position reductions
17 required to prevent manipulation,
18 excessive speculation as described
19 in section 4a, price distortion, or
20 disruption of delivery or the cash
21 settlement process; and

22 “(dd) any other area of in-
23 terest expressed by the Commis-
24 sion to the foreign board of trade
25 or foreign futures authority;

1 “(IV) provides information to the
2 Commission regarding large trader
3 positions in the agreement, contract,
4 or transaction that is comparable to
5 the large trader position information
6 collected by the Commission for the 1
7 or more contracts against which the
8 agreement, contract, or transaction
9 traded on the foreign board of trade
10 settles; and

11 “(V) provides the Commission
12 such information as is necessary to
13 publish reports on aggregate trader
14 positions for the agreement, contract,
15 or transaction traded on the foreign
16 board of trade that are comparable to
17 such reports on aggregate trader posi-
18 tions for the 1 or more contracts
19 against which the agreement, con-
20 tract, or transaction traded on the
21 foreign board of trade settles.

22 “(B) EXISTING FOREIGN BOARDS OF
23 TRADE.—Subparagraph (A) shall not be effec-
24 tive with respect to any foreign board of trade
25 to which, prior to the date of enactment of this

1 paragraph, the Commission granted direct ac-
2 cess permission until the date that is 180 days
3 after that date of enactment.”.

4 (b) LIABILITY OF REGISTERED PERSONS TRADING
5 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-
6modity Exchange Act (7 U.S.C. 6) is amended—

7 (1) in subsection (a), in the matter preceding
8 paragraph (1), by inserting “or by subsection (e)”
9 after “Unless exempted by the Commission pursuant
10 to subsection (c)”;

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

12 “(e) LIABILITY OF REGISTERED PERSONS TRADING
13 ON A FOREIGN BOARD OF TRADE.—A person registered
14 with the Commission, or exempt from registration by the
15 Commission, under this Act may not be found to have vio-
16 lated subsection (a) with respect to a transaction in, or
17 in connection with, a contract of sale of a commodity for
18 future delivery if the person has reason to believe that the
19 transaction and the contract is made on or subject to the
20 rules of a foreign board of trade that has complied with
21 paragraphs (1) and (2) of subsection (b).”.

22 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
23TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
24change Act (7 U.S.C. 25(a)) (as amended by section 128)
25 is amended by adding at the end the following:

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

12 **SEC. 128. LEGAL CERTAINTY FOR SWAPS.**

13 Section 22(a) of the Commodity Exchange Act (7
14 U.S.C. 25(a)) is amended by striking paragraph (4) and
15 inserting the following:

16 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
17 GIBLE COUNTERPARTIES.—

18 “(A) IN GENERAL.—No hybrid instrument
19 sold to any investor shall be void, voidable, or
20 unenforceable, and no party to a hybrid instru-
21 ment shall be entitled to rescind, or recover any
22 payment made with respect to, the hybrid in-
23 strument under this section or any other provi-
24 sion of Federal or State law, based solely on the
25 failure of the hybrid instrument to comply with

1 the terms or conditions of section 2(f) or regu-
2 lations of the Commission.

3 “(B) SWAPS.—No agreement, contract, or
4 transaction between eligible contract partici-
5 pants or persons reasonably believed to be eligi-
6 ble contract participants shall be void, voidable,
7 or unenforceable, and no party to an agree-
8 ment, contract, or transaction shall be entitled
9 to rescind, or recover any payment made with
10 respect to, the agreement, contract, or trans-
11 action under this section or any other provision
12 of Federal or State law, based solely on the fail-
13 ure of the agreement, contract, or transaction—

14 “(i) to meet the definition of a swap
15 under section 1a; or

16 “(ii) to be cleared in accordance with
17 section 2(h)(1).

18 “(5) LEGAL CERTAINTY FOR LONG-TERM
19 SWAPS ENTERED INTO BEFORE THE DATE OF EN-
20 ACTMENT OF THE WALL STREET TRANSPARENCY
21 AND ACCOUNTABILITY ACT OF 2010.—

22 “(A) IN GENERAL.—Any swap entered into
23 before the date of enactment of the Wall Street
24 Transparency and Accountability Act of 2010,
25 the terms of which have not expired as of the

1 date of enactment, shall not be subject to the
2 mandatory clearing requirement under this Act.

3 “(B) EFFECT ON SWAPS.—Unless specifi-
4 cally reserved in the applicable bilateral trading
5 agreement, neither the enactment of the Wall
6 Street Transparency and Accountability Act of
7 2010, nor any requirement under that Act or
8 an amendment made by that Act, shall con-
9 stitute a termination event, force majeure, ille-
10 gality, increased costs, regulatory change, or
11 similar event under a bilateral trading agree-
12 ment (including any related credit support ar-
13 rangement) that would permit a party to termi-
14 nate, renegotiate, modify, amend, or supple-
15 ment 1 or more transactions under the bilateral
16 trading agreement.”.

17 **SEC. 129. MULTILATERAL CLEARING ORGANIZATIONS.**

18 Sections 408 and 409 of the Federal Deposit Insur-
19 ance Corporation Improvement Act of 1991 (12 U.S.C.
20 4421, 4422) are repealed.

21 **SEC. 130. ENFORCEMENT.**

22 (a) ENFORCEMENT AUTHORITY.—The Commodity
23 Exchange Act is amended by inserting after section 4b (7
24 U.S.C. 6b) the following:

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

2 “(a) COMMISSION.—Except as provided in sub-
3 sections (b), (c), and (d), the Commission shall have exclu-
4 sive authority to enforce the amendments made by the
5 Wall Street Transparency and Accountability Act of 2010
6 with respect to any person.

7 “(b) PRUDENTIAL REGULATORS.—The prudential
8 regulators shall have exclusive authority to enforce section
9 4s(e) and other prudential requirements of this Act with
10 respect to banks, and branches or agencies of foreign
11 banks that are swap dealers or major swap participants.

12 “(c) REFERRALS.—

13 “(1) PRUDENTIAL REGULATORS.—If the pru-
14 dential regulator for a swap dealer or major swap
15 participant has cause to believe that the swap dealer
16 or major swap participant, or any affiliate or divi-
17 sion of the swap dealer or major swap participant,
18 may have engaged in conduct that constitutes a vio-
19 lation of the nonprudential requirements of this Act
20 (including section 4s or rules adopted by the Com-
21 mission under that section), the prudential regulator
22 shall promptly notify the Commission in a written
23 report that includes—

24 “(A) a request that the Commission ini-
25 tiate an enforcement proceeding under this Act;
26 and

1 “(B) an explanation of the facts and cir-
2 cumstances that led to the preparation of the
3 written report.

4 “(2) COMMISSION.—If the Commission has
5 cause to believe that a swap dealer or major swap
6 participant that has a prudential regulator may have
7 engaged in conduct that constitutes a violation of
8 any prudential requirement of section 4s or rules
9 adopted by the Commission under that section, the
10 Commission may notify the prudential regulator of
11 the conduct in a written report that includes—

12 “(A) a request that the prudential regu-
13 lator initiate an enforcement proceeding under
14 this Act or any other Federal law (including
15 regulations); and

16 “(B) an explanation of the concerns of the
17 Commission, and a description of the facts and
18 circumstances, that led to the preparation of
19 the written report.

20 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

21 “(1) INITIATION OF ENFORCEMENT PRO-
22 CEEDING BY PRUDENTIAL REGULATOR.—If the
23 Commission does not initiate an enforcement pro-
24 ceeding before the end of the 90-day period begin-
25 ning on the date on which the Commission receives

1 a written report under subsection (c)(1), the pruden-
2 tial regulator may initiate an enforcement pro-
3 ceeding.

4 “(2) INITIATION OF ENFORCEMENT PRO-
5 CEEDING BY COMMISSION.—If the prudential regu-
6 lator does not initiate an enforcement proceeding be-
7 fore the end of the 90-day period beginning on the
8 date on which the prudential regulator receives a
9 written report under subsection (c)(2), the Commis-
10 sion may initiate an enforcement proceeding.”.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 4b of the Commodity Exchange Act
13 (7 U.S.C. 6b) is amended—

14 (A) in subsection (a)(2), by striking “or
15 other agreement, contract, or transaction sub-
16 ject to paragraphs (1) and (2) of section
17 5a(g),” and inserting “or swap,”;

18 (B) in subsection (b), by striking “or other
19 agreement, contract or transaction subject to
20 paragraphs (1) and (2) of section 5a(g),” and
21 inserting “or swap,”; and

22 (C) by adding at the end the following:

23 “(e) It shall be unlawful for any person, directly or
24 indirectly, by the use of any means or instrumentality of
25 interstate commerce, or of the mails, or of any facility of

1 any registered entity, in or in connection with any order
2 to make, or the making of, any contract of sale of any
3 commodity for future delivery (or option on such a con-
4 tract), or any swap, on a group or index of securities (or
5 any interest therein or based on the value thereof) that
6 is a broad-based security index—

7 “(1) to employ any device, scheme, or artifice to
8 defraud;

9 “(2) to make any untrue statement of a mate-
10 rial fact or to omit to state a material fact necessary
11 in order to make the statements made, in the light
12 of the circumstances under which they were made,
13 not misleading; or

14 “(3) to engage in any act, practice, or course of
15 business which operates or would operate as a fraud
16 or deceit upon any person.”.

17 (2) Section 4c(a)(1) of the Commodity Ex-
18 change Act (7 U.S.C. 6c(a)(1)) is amended by in-
19 sserting “or swap” before “if the transaction is used
20 or may be used”.

21 (3) Section 6(c) of the Commodity Exchange
22 Act (7 U.S.C. 9) is amended in the first sentence by
23 inserting “or of any swap,” before “or has willfully
24 made”.

1 (4) Section 6(d) of the Commodity Exchange
2 Act (7 U.S.C. 13b) is amended in the first sentence,
3 in the matter preceding the proviso, by inserting “or
4 of any swap,” before “or otherwise is violating”.

5 (5) Section 6c(a) of the Commodity Exchange
6 Act (7 U.S.C. 13a-1(a)) is amended in the matter
7 preceding the proviso by inserting “or any swap”
8 after “commodity for future delivery”.

9 (6) Section 9 of the Commodity Exchange Act
10 (7 U.S.C. 13) is amended—

11 (A) in subsection (a)—

12 (i) in paragraph (2), by inserting “or
13 of any swap,” before “or to corner”; and

14 (ii) in paragraph (4), by inserting
15 “swap data repository,” before “or futures
16 association” and

17 (B) in subsection (e)(1)—

18 (i) by inserting “swap data reposi-
19 tory,” before “or registered futures asso-
20 ciation”; and

21 (ii) by inserting “, or swaps,” before
22 “on the basis”.

23 (7) Section 9(a) of the Commodity Exchange
24 Act (7 U.S.C. 13(a)) is amended by adding at the
25 end the following:

1 “(6) Any person to abuse the end user clearing
2 exemption under section 2(h)(4), as determined by
3 the Commission.”.

4 (8) Section 8(b) of the Federal Deposit Insur-
5 ance Act (12 U.S.C. 1818(b)) is amended by adding
6 at the end the following:

7 “(11) SWAPS.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graph (B), this section shall apply to any swap
10 dealer, major swap participant, security-based
11 swap dealer, major security-based swap partici-
12 pant, derivatives clearing organization, swap
13 data repository, or swap execution facility, re-
14 gardless of whether the dealer, participant, or-
15 ganization, repository, or facility is an insured
16 depository institution, for which the Board, the
17 Corporation, or the Office of the Comptroller of
18 the Currency is the appropriate Federal bank-
19 ing agency or prudential regulator for purposes
20 of the amendments made by the Wall Street
21 Transparency and Accountability Act of 2010.

22 “(B) LIMITATION.—The authority de-
23 scribed in subparagraph (A) shall be limited by,
24 and exercised in accordance with, section 4b-1
25 of the Commodity Exchange Act.”.

1 (9) Section 2(c)(2)(B) of the Commodity Ex-
2 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

3 (A) by striking “(dd),” each place it ap-
4 pears;

5 (B) in clause (iii), by inserting “, and ac-
6 counts or pooled investment vehicles described
7 in clause (vi),” before “shall be subject to”; and

8 (C) by adding at the end the following:

9 “(vi) This Act applies to, and the
10 Commission shall have jurisdiction over, an
11 account or pooled investment vehicle that
12 is offered for the purpose of trading, or
13 that trades, any agreement, contract, or
14 transaction in foreign currency described
15 in clause (i).”.

16 (10) Section 2(c)(2)(C) of the Commodity Ex-
17 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

18 (A) by striking “(dd),” each place it ap-
19 pears;

20 (B) in clause (ii)(I), by inserting “, and ac-
21 counts or pooled investment vehicles described
22 in clause (vii),” before “shall be subject to”;
23 and

24 (C) by adding at the end the following:

1 “(vii) This Act applies to, and the
2 Commission shall have jurisdiction over, an
3 account or pooled investment vehicle that
4 is offered for the purpose of trading, or
5 that trades, any agreement, contract, or
6 transaction in foreign currency described
7 in clause (i).”.

8 (11) Section 1a(19)(A)(iv)(II) of the Com-
9 modity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II))
10 (as redesignated by section 111(a)(1)) is amended
11 by inserting before the semicolon at the end the fol-
12 lowing: “provided, however, that for purposes of sec-
13 tion 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the
14 term ‘eligible contract participant’ shall not include
15 a commodity pool in which any participant is not
16 otherwise an eligible contract participant”.

17 **SEC. 131. RETAIL COMMODITY TRANSACTIONS.**

18 (a) IN GENERAL.—Section 2(c) of the Commodity
19 Exchange Act (7 U.S.C. 2(c)) is amended—

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

23 (2) in paragraph (2), by adding at the end the
24 following:

1 “(D) RETAIL COMMODITY TRANS-
2 ACTIONS.—

3 “(i) APPLICABILITY.—Except as pro-
4 vided in clause (ii), this subparagraph shall
5 apply to any agreement, contract, or trans-
6 action in any commodity that is—

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

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

19 “(ii) EXCEPTIONS.—This subpara-
20 graph shall not apply to—

21 “(I) an agreement, contract, or
22 transaction described in paragraph (1)
23 or subparagraphs (A), (B), or (C), in-
24 cluding any agreement, contract, or

1 transaction specifically excluded from
2 subparagraph (A), (B), or (C);
3 “(II) any security;
4 “(III) a contract of sale that—
5 “(aa) results in actual deliv-
6 ery within 28 days or such other
7 period as the Commission may
8 determine by rule or regulation
9 based upon the typical commer-
10 cial practice in cash or spot mar-
11 kets for the commodity involved;
12 or
13 “(bb) creates an enforceable
14 obligation to deliver between a
15 seller and a buyer that have the
16 ability to deliver and accept deliv-
17 ery, respectively, in connection
18 with the line of business of the
19 seller and buyer; or
20 “(IV) an agreement, contract, or
21 transaction that is listed on a national
22 securities exchange registered under
23 section 6(a) of the Securities Ex-
24 change Act of 1934 (15 U.S.C.
25 78f(a)); or

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

5 “(iii) ENFORCEMENT.—Sections 4(a),
6 4(b), and 4b apply to any agreement, con-
7 tract, or transaction described in clause (i),
8 as if the agreement, contract, or trans-
9 action was a contract of sale of a com-
10 modity for future delivery.

11 “(iv) ELIGIBLE COMMERCIAL ENTI-
12 TY.—For purposes of this subparagraph,
13 an agricultural producer, packer, or han-
14 dler shall be considered to be an eligible
15 commercial entity for any agreement, con-
16 tract, or transaction for a commodity in
17 connection with the line of business of the
18 agricultural producer, packer, or handler.

19 “(v) ACTUAL DELIVERY.—For pur-
20 poses of clause (ii)(III), the term ‘actual
21 delivery’ does not include delivery to a
22 third party in a financed transaction in
23 which the commodity is held as collat-
24 eral.”.

1 (b) CONFORMING AMENDMENTS RELATING TO RE-
2 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

3 (1) Section 2(c)(2)(B)(i)(II) of the Commodity
4 Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amend-
5 ed—

6 (A) in item (aa), by inserting “United
7 States” before “financial institution”;

8 (B) by striking items (dd) and (ff);

9 (C) by redesignating items (ee) and (gg) as
10 items (dd) and (ff), respectively; and

11 (D) in item (dd) (as so redesignated), by
12 striking the semicolon and inserting “; or”.

13 (2) Section 2(c)(2) of the Commodity Exchange
14 Act (7 U.S.C. 2(c)(2)) (as amended by subsection
15 (a)(2)) is amended by adding at the end the fol-
16 lowing:

17 “(E) PROHIBITION.—

18 “(i) DEFINITION OF FEDERAL REGU-
19 LATORY AGENCY.—In this subparagraph,
20 the term ‘Federal regulatory agency’
21 means—

22 “(I) the Commission;

23 “(II) the Securities and Ex-
24 change Commission;

1 “(III) an appropriate Federal
2 banking agency;

3 “(IV) the National Credit Union
4 Association; and

5 “(V) the Farm Credit Adminis-
6 tration.

7 “(ii) PROHIBITION.—A person de-
8 scribed in subparagraph (B)(i)(II) for
9 which there is a Federal regulatory agency
10 shall not offer to, or enter into with, a per-
11 son that is not an eligible contract partici-
12 pant, any agreement, contract, or trans-
13 action in foreign currency described in sub-
14 paragraph (B)(i)(I) except pursuant to a
15 rule or regulation of a Federal regulatory
16 agency allowing the agreement, contract,
17 or transaction under such terms and condi-
18 tions as the Federal regulatory agency
19 shall prescribe.

20 “(iii) REQUIREMENTS OF RULES AND
21 REGULATIONS.—

22 “(I) IN GENERAL.—The rules
23 and regulations described in clause
24 (ii) shall prescribe appropriate re-
25 quirements with respect to—

1 “(aa) disclosure;
2 “(bb) recordkeeping;
3 “(cc) capital and margin;
4 “(dd) reporting;
5 “(ee) business conduct;
6 “(ff) documentation; and
7 “(gg) such other standards
8 or requirements as the Federal
9 regulatory agency shall determine
10 to be necessary.

11 “(II) TREATMENT.—The rules or
12 regulations described in clause (ii)
13 shall treat all agreements, contracts,
14 and transactions in foreign currency
15 described in subparagraph (B)(i)(I),
16 and all agreements, contracts, and
17 transactions in foreign currency that
18 are functionally or economically simi-
19 lar to agreements, contracts, or trans-
20 actions described in subparagraph
21 (B)(i)(I), similarly.”.

22 **SEC. 132. OTHER AUTHORITY.**

23 Unless otherwise provided by the amendments made
24 by this title, the amendments made by this title do not
25 divest any appropriate Federal banking agency, the Com-

1 modify Futures Trading Commission, the Securities and
2 Exchange Commission, or other Federal or State agency
3 of any authority derived from any other applicable law.

4 **SEC. 133. RESTITUTION REMEDIES.**

5 Section 6c(d) of the Commodity Exchange Act (7
6 U.S.C. 13a-1(d)) is amended by adding at the end the
7 following:

8 “(3) **EQUITABLE REMEDIES.**—In any action
9 brought under this section, the Commission may
10 seek, and the court shall have jurisdiction to impose,
11 on a proper showing, on any person found in the ac-
12 tion to have committed any violation, equitable rem-
13 edies including—

14 “(A) restitution to persons who have sus-
15 tained losses proximately caused by such viola-
16 tion (in the amount of such losses); and

17 “(B) disgorgement of gains received in
18 connection with such violation.”.

19 **SEC. 134. ENHANCED COMPLIANCE BY REGISTERED ENTI-**
20 **TIES.**

21 (a) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—
22 Section 5(d) of the Commodity Exchange Act (7 U.S.C.
23 7(d)) (as amended by section 124(b)) is amended by strik-
24 ing paragraph (1) and inserting the following:

25 “(1) **DESIGNATION.**—

1 “(I) the core principles described
2 in this paragraph; and

3 “(II) any requirement that the
4 Commission may impose by rule or
5 regulation pursuant to section 8a(5).

6 “(ii) DISCRETION OF COMMISSION.—
7 Unless the Commission determines other-
8 wise by rule or regulation, a derivatives
9 clearing organization shall have reasonable
10 discretion in establishing the manner by
11 which the derivatives clearing organization
12 complies with each core principle.”.

13 (c) EFFECT OF INTERPRETATION.—Section 5c(a) of
14 the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is
15 amended by striking paragraph (2) and inserting the fol-
16 lowing:

17 “(2) EFFECT OF INTERPRETATION.—An inter-
18 pretation issued under paragraph (1) may provide
19 the exclusive means for complying with each section
20 described in paragraph (1).”.

21 (d) NEW CONTRACTS, NEW RULES, AND RULE
22 AMENDMENTS.—

23 (1) IN GENERAL.—A registered entity may elect
24 to list for trading or accept for clearing any new
25 contract or other instrument by providing to the

1 Commission and the Secretary of the Treasury, in
2 the case of a contract of sale of a government secu-
3 rity for future delivery (or option on such a con-
4 tract) or a rule or rule amendment specifically re-
5 lated to such a contract) a written certification that
6 the new contract or instrument or clearing of the
7 new contract or instrument, new rule, or rule
8 amendment complies with this Act (including regula-
9 tions under this Act).

10 (2) RULE REVIEW.—

11 (A) IN GENERAL.—Except as provided in
12 clause (iii), each new rule or rule amendment
13 described in subparagraph (A), including inter-
14 pretations, shall become effective, pursuant to
15 the certification of the registered entity, on the
16 date that is 10 business days after the date on
17 which the Commission receives the certification
18 (or such shorter period as determined by the
19 Commission by rule or regulation).

20 (B) PRECLEARANCE PROCESS FOR NEW
21 RULES.—

22 (i) IN GENERAL.—Each registered en-
23 tity that proposes to certify a new rule,
24 rule amendment, or interpretation shall—

1 (I) not later than the date that is
2 7 business days before the date on
3 which the registered entity certifies
4 the new rule, provide notification to
5 the Commission; and

6 (II) provide to the Commission a
7 draft of the proposed rule or interpre-
8 tation, background information, and
9 such other information as the Com-
10 mission may require.

11 (ii) FAILURE TO FOLLOW
12 PRECLEARANCE REQUIREMENTS.—A new
13 rule certified by a registered entity that
14 does not meet each requirement described
15 in subclause (I) shall not be valid.

16 (C) EXCEPTION.—Clause (i) shall not
17 apply if the Commission notifies the registered
18 entity in writing during the period described in
19 clause (i) that the Commission has decided to
20 object to the proposed certification on the
21 grounds that the proposed certification is incon-
22 sistent with this Act (including regulations).

23 (3) EFFECTIVENESS OF PROPOSED RULE OR
24 RULE AMENDMENT.—If the Commission provides
25 written notification to the registered entity under

1 subparagraph (B)(iii), the proposed certification
2 shall be ineffective.

3 (4) PRIOR APPROVAL.—

4 (A) IN GENERAL.—A registered entity may
5 request that the Commission grant prior ap-
6 proval to any new contract or other instrument,
7 new rule, or rule amendment.

8 (B) PRIOR APPROVAL REQUIRED.—Not-
9 withstanding any other provision of this section,
10 a designated contract market shall submit to
11 the Commission for prior approval each rule
12 amendment that materially changes the terms
13 and conditions, as determined by the Commis-
14 sion, in any contract of sale for future delivery
15 of a commodity specifically enumerated in sec-
16 tion 1a(10) (or any option thereon) traded
17 through its facilities if the rule amendment ap-
18 plies to contracts and delivery months which
19 have already been listed for trading and have
20 open interest.

21 (C) DEADLINE.—If prior approval is re-
22 quested under subparagraph (A), the Commis-
23 sion shall take final action on the request not
24 later than 90 days after submission of the re-
25 quest, unless the person submitting the request

1 agrees to an extension of the time limitation es-
2 tablished under this subparagraph.

3 (5) APPROVAL.—

4 (A) RULES AND INTERPRETATIONS.—The
5 Commission shall approve a new rule, rule
6 amendment, or interpretation of a registered
7 entity unless the Commission finds that the new
8 rule, rule amendment, or interpretation is in-
9 consistent with this Act (including regulations).

10 (B) CONTRACTS AND INSTRUMENTS.—The
11 Commission shall approve a new contract or
12 other instrument unless the Commission finds
13 that the new contract or other instrument
14 would violate this Act (including regulations).

15 (C) SPECIAL RULE FOR REVIEW AND AP-
16 PROVAL OF EVENT CONTRACTS AND SWAPS
17 CONTRACTS.—

18 (i) EVENT CONTRACTS.—In connec-
19 tion with the listing of any agreement, con-
20 tract, transaction, or swap in an excluded
21 commodity that is based upon an occur-
22 rence, extent of an occurrence, or contin-
23 gency by a designated contract market or
24 swap execution facility, the Commission
25 shall first make a written determination—

1 (I) whether such contract or
2 swap constitutes a gaming contract;
3 and

4 (II) if the Commission deter-
5 mines that the contract or swap does
6 not constitute a gaming contract, then
7 the Commission shall make a separate
8 written determination as to whether
9 the contract or swap is in the public
10 interest, before the contract or swap
11 may be offered, traded, or cleared
12 under this Act.

13 (ii) SWAPS CONTRACTS.—In connec-
14 tion with the listing of a swap for clearing
15 by a derivatives clearing organization, the
16 Commission shall determine, upon request
17 or on its own motion, the initial eligibility,
18 or the continuing qualification, of a deriva-
19 tives clearing organization to clear such a
20 swap under those criteria, conditions, or
21 rules that the Commission, in its discre-
22 tion, determines.

23 (iii) DEADLINE.—The Commission
24 shall take final action under clauses (i)
25 and (ii) in not later than 90 days from the

1 commencement of its review unless the
2 party seeking to offer the contract or swap
3 agrees to an extension of this time limita-
4 tion.

5 (e) VIOLATION OF CORE PRINCIPLES.—Section 5c of
6 the Commodity Exchange Act (7 U.S.C. 7a–2) is amended
7 by striking subsection (d).

8 **SEC. 135. INSIDER TRADING.**

9 Section 4c(a) of the Commodity Exchange Act (7
10 U.S.C. 6c(a)) is amended by adding at the end the fol-
11 lowing:

12 “(3) CONTRACT OF SALE.—It shall be unlawful
13 for any employee or agent of any department or
14 agency of the Federal Government who, by virtue of
15 the employment or position of the employee or
16 agent, acquires information that may affect or tend
17 to affect the price of any commodity in interstate
18 commerce, or for future delivery, or any swap, and
19 which information has not been disseminated by the
20 department or agency of the Federal Government
21 holding or creating the information in a manner
22 which makes it generally available to the trading
23 public, or disclosed in a criminal, civil, or adminis-
24 trative hearing, or in a congressional, administrative,
25 or Government Accountability Office report, hearing

1 audit, or investigation, to use the information in his
2 personal capacity and for personal gain to enter
3 into, or offer to enter into—

4 “(A) a contract of sale of a commodity for
5 future delivery (or option on such a contract);

6 “(B) an option (other than an option exe-
7 cuted or traded on a national securities ex-
8 change registered pursuant to section 6(a) of
9 the Securities Exchange Act of 1934 (15
10 U.S.C. 78f(a)); or

11 “(C) a swap.

12 “(4) IMPARTING OF NONPUBLIC INFORMA-
13 TION.—It shall be unlawful—

14 “(A) for any employee or agent of any de-
15 partment or agency of the Federal Government
16 who, by virtue of the employment or position of
17 the employee or agent, acquires information
18 that may affect or tend to affect the price of
19 any commodity in interstate commerce, or for
20 future delivery, or any swap, and which infor-
21 mation has not been disseminated by the de-
22 partment or agency of the Federal Government
23 holding or creating the information in a manner
24 which makes it generally available to the trad-
25 ing public, or disclosed in a criminal, civil, or

1 administrative hearing, or in a congressional,
2 administrative, or Government Accountability
3 Office report, hearing, audit, or investigation,
4 to impart the information in his personal capac-
5 ity and for personal gain with intent to assist
6 another person, directly or indirectly, to use the
7 information to enter into, or offer to enter
8 into—

9 “(i) a contract of sale of a commodity
10 for future delivery (or option on such a
11 contract);

12 “(ii) an option (other than an option
13 executed or traded on a national securities
14 exchange registered pursuant to section
15 6(a) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78f(a)); or

17 “(iii) a swap; and

18 “(B) for any person knowingly to acquire,
19 by any means whatsoever, governmental infor-
20 mation that may affect or tend to affect the
21 price of any commodity in interstate commerce,
22 or for future delivery, or any swap, where such
23 person knows, or in the exercise of reasonable
24 care should know, that such information has
25 not been disseminated by the department or

1 agency of the Federal Government holding or
2 creating the information in a manner which
3 makes it generally available to the trading pub-
4 lic, or disclosed in a criminal, civil, or adminis-
5 trative hearing, or in a congressional, adminis-
6 trative, or Government Accountability Office re-
7 port, hearing, audit, or investigation, and to use
8 such information, or to impart such information
9 with the intent to assist another person, directly
10 or indirectly, to use such information to enter
11 into, or offer to enter into—

12 “(i) a contract of sale of a commodity
13 for future delivery (or option on such a
14 contract);

15 “(ii) an option (other than an option
16 executed or traded on a national securities
17 exchange registered pursuant to section
18 6(a) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78f(a)); or

20 “(iii) a swap.”

21 **SEC. 136. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

22 Section 4c(a) of the Commodity Exchange Act (7
23 U.S.C. 6c(a)) (as amended by section 135) is amended
24 by adding at the end the following:

1 “(5) DISRUPTIVE PRACTICES.—It shall be un-
2 lawful for any person to engage in any trading, prac-
3 tice, or conduct on or subject to the rules of a reg-
4 istered entity that—

5 “(A) violates bids or offers;

6 “(B) demonstrates intentional or reckless
7 disregard for the orderly execution of trans-
8 actions during the closing period; or

9 “(C) is, is of the character of, or is com-
10 monly known to the trade as, ‘spoofing’ (bid-
11 ding or offering with the intent to cancel the
12 bid or offer before execution).

13 “(6) RULEMAKING AUTHORITY.—The Commis-
14 sion may make and promulgate such rules and regu-
15 lations as, in the judgment of the Commission, are
16 reasonably necessary to prohibit the trading prac-
17 tices described in paragraph (5) and any other trad-
18 ing practice that is disruptive of fair and equitable
19 trading.

20 “(7) USE OF SWAPS TO DEFRAUD.—It shall be
21 unlawful for any person to enter into a swap that
22 the person knows, or in the exercise of reasonable
23 care should have known, that its counterparty will or
24 could use the swap as part of a device, scheme, or

1 artifice to defraud a third party or the public or to
2 violate any provision of law.”.

3 **SEC. 137. COMMODITY WHISTLEBLOWER INCENTIVES AND**
4 **PROTECTION.**

5 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
6 is amended by adding at the end the following:

7 **“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND**
8 **PROTECTION.**

9 “(a) AWARD.—

10 “(1) IN GENERAL.—In any judicial or adminis-
11 trative action brought by the Commission under this
12 Act that results in a monetary judgment exceeding
13 \$1,000,000, the Commission, under regulations pre-
14 scribed by the Commission and subject to subsection
15 (b), may pay an award or awards not exceeding an
16 amount equal to 30 percent, in total, of the mone-
17 tary judgment imposed in the action (or related ac-
18 tions) to 1 or more whistleblowers who voluntarily
19 provided original information to the Commission
20 that led to the successful resolution of the action.

21 “(2) AMOUNT PAYABLE.—Any amount payable
22 under paragraph (1) shall be paid from the fund de-
23 scribed in subsection (f).

24 “(b) DETERMINATION OF AMOUNT OF AWARD; DE-
25 NIAL OF AWARD.—

1 “(1) DETERMINATION OF AMOUNT OF
2 AWARD.—In determining the amount of an award,
3 within the limit specified in subsection (a), the Com-
4 mission may take into account the significance of
5 the whistleblower’s information to the successful res-
6 olution of the judicial or administrative action de-
7 scribed in subsection (a), the degree of assistance
8 provided by the whistleblower and any legal rep-
9 resentative of the whistleblower in such action, the
10 Commission’s interest in deterring violations of the
11 Act and regulations thereunder by making awards to
12 whistleblowers who provide original information that
13 leads to the successful enforcement of such laws,
14 and such additional factors as the Commission may
15 establish by rule or regulation.

16 “(2) DENIAL OF AWARD.—

17 “(A) IN GENERAL.—No award under sub-
18 section (a) shall be made to any individual
19 who—

20 “(i) is, or was at the time he or she
21 acquired the original information sub-
22 mitted to the Commission, a member, offi-
23 cer, or employee of any department or
24 agency of the Federal Government, a reg-
25 istered entity, a registered futures associa-

1 tion, or a self-regulatory organization as
2 defined in section 3(a) of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78c(a));
4 or

5 “(ii) fails to submit information to the
6 Commission in such form as the Commis-
7 sion may, by rule or regulation, require.

8 “(B) DETERMINATION.—

9 “(i) IN GENERAL.—Subject to clause
10 (ii), the Commission may determine to
11 make an award to an individual under sub-
12 section (a) notwithstanding that such indi-
13 vidual knowingly violated, assisted in the
14 violation of, or caused to be violated any
15 rule, regulation, or order of the Commis-
16 sion with respect to which the Commission
17 or a court has imposed a monetary judg-
18 ment.

19 “(ii) LIMITATION.—No award under
20 subsection (a) shall be made to any indi-
21 vidual who is convicted of a criminal viola-
22 tion related to the judicial or administra-
23 tive action for which the individual other-
24 wise could receive an award under this sec-
25 tion.

1 “(c) REPRESENTATION.—

2 “(1) PERMITTED REPRESENTATION.—Any
3 whistleblower who makes a claim for an award under
4 subsection (a) may be represented by counsel.

5 “(2) REQUIRED REPRESENTATION.—

6 “(A) IN GENERAL.—Any whistleblower
7 who makes a claim for an award under sub-
8 section (a) must be represented by counsel if
9 the whistleblower submits the information upon
10 which the claim is based anonymously.

11 “(B) DISCLOSURE.—Prior to the payment
12 of an award, a whistleblower must disclose his
13 or her identity and provide such other informa-
14 tion as the Commission may require.

15 “(d) NO CONTRACT NECESSARY.—No contract with
16 the Commission is necessary for any whistleblower to re-
17 ceive an award under subsection (a), unless the Commis-
18 sion, by rule or regulation, so requires.

19 “(e) APPEALS.—Any determination under this sec-
20 tion, including whether, to whom, or in what amount to
21 make an award, shall be in the sole discretion of the Com-
22 mission, and any such determination shall be final and not
23 subject to judicial review.

24 “(f) COMMODITY FUTURES TRADING COMMISSION
25 CUSTOMER PROTECTION FUND.—

1 “(1) ESTABLISHMENT.—There is established in
2 the Treasury of the United States a revolving fund
3 to be known as the ‘Commodity Futures Trading
4 Commission Customer Protection Fund’ (referred to
5 in this subsection as the ‘Fund’).

6 “(2) USE OF FUND.—The Fund shall be avail-
7 able to the Commission, without further appropria-
8 tion or fiscal year limitation, for—

9 “(A) the payment of awards to whistle-
10 blowers as provided in subsection (a); and

11 “(B) the funding of customer education
12 initiatives designed to help customers protect
13 themselves against fraud or other violations of
14 this Act, or the rules and regulations there-
15 under.

16 “(3) DEPOSITS AND CREDITS.—There shall be
17 deposited into or credited to the Fund—

18 “(A) any monetary judgment collected by
19 the Commission in any judicial or administra-
20 tive action brought by the Commission under
21 this Act, that is not otherwise distributed to
22 victims of a violation of this Act or the rules
23 and regulations thereunder underlying such ac-
24 tion, unless the balance of the Fund at the time

1 the monetary judgment is collected exceeds
2 \$100,000,000; and

3 “(B) all income from investments made
4 under paragraph (4).

5 “(4) INVESTMENTS.—

6 “(A) AMOUNTS IN FUND MAY BE IN-
7 VESTED.—The Commission may request the
8 Secretary of the Treasury to invest the portion
9 of the Fund that is not, in the Commission’s
10 judgment, required to meet the current needs of
11 the Fund.

12 “(B) ELIGIBLE INVESTMENTS.—Invest-
13 ments shall be made by the Secretary of the
14 Treasury in obligations of the United States or
15 obligations that are guaranteed as to principal
16 and interest by the United States, with matu-
17 rities suitable to the needs of the Fund as de-
18 termined by the Commission.

19 “(C) INTEREST AND PROCEEDS CRED-
20 ITED.—The interest on, and the proceeds from
21 the sale or redemption of, any obligations held
22 in the Fund shall be credited to, and form a
23 part of, the Fund.

24 “(5) REPORTS TO CONGRESS.—Not later than
25 October 30 of each year, the Commission shall

1 transmit to the Committee on Agriculture, Nutri-
2 tion, and Forestry of the Senate, and the Committee
3 on Agriculture of the House of Representatives a re-
4 port on—

5 “(A) the Commission’s whistleblower
6 award program under this section, including a
7 description of the number of awards granted
8 and the types of cases in which awards were
9 granted during the preceding fiscal year;

10 “(B) customer education initiatives de-
11 scribed in paragraph (2)(B) that were funded
12 by the Fund during the preceding fiscal year;

13 “(C) the balance of the Fund at the begin-
14 ning of the preceding fiscal year;

15 “(D) the amounts deposited into or cred-
16 ited to the Fund during the preceding fiscal
17 year;

18 “(E) the amount of earnings on invest-
19 ments of amounts in the Fund during the pre-
20 ceeding fiscal year;

21 “(F) the amount paid from the Fund dur-
22 ing the preceding fiscal year to whistleblowers
23 pursuant to subsection (a);

1 “(G) the amount paid from the Fund dur-
2 ing the preceding fiscal year for customer edu-
3 cation initiatives described in paragraph (2)(B);

4 “(H) the balance of the Fund at the end
5 of the preceding fiscal year; and

6 “(I) a complete set of audited financial
7 statements, including a balance sheet, income
8 statement, and cash flow analysis.

9 “(g) PROTECTION OF WHISTLEBLOWERS.—

10 “(1) PROHIBITION AGAINST RETALIATION.—

11 “(A) IN GENERAL.—Any employee, con-
12 tractor, or agent shall be entitled to all relief
13 necessary to make that employee, contractor, or
14 agent whole, if that employee, contractor, or
15 agent is discharged, demoted, suspended,
16 threatened, harassed, or in any other manner
17 discriminated against in the terms and condi-
18 tions of employment because of any lawful act
19 done by the employee, contractor, or agent in
20 providing information to the Commission, or in
21 assisting in any investigation or judicial or ad-
22 ministrative action of the Commission based
23 upon or related to such information.

24 “(B) RELIEF.—

1 “(i) IN GENERAL.—Relief under sub-
2 paragraph (A) shall include reinstatement
3 with the same seniority status that the em-
4 ployee, contractor, or agent would have
5 had, but for the discrimination, 2 times the
6 amount of back pay (with interest), and
7 compensation for any special damages sus-
8 tained as a result of the discrimination, in-
9 cluding litigation costs, expert witness fees,
10 and reasonable attorneys’ fees.

11 “(ii) FORUM.—An action under this
12 subsection may be brought in the appro-
13 priate district court of the United States
14 for the relief provided in this subsection.

15 “(C) PROCEDURE.—

16 “(i) SUBPOENAS.—A subpoena requir-
17 ing the attendance of a witness at a trial
18 or hearing conducted under this subsection
19 may be served at any place in the United
20 States.

21 “(ii) STATUTE OF LIMITATIONS.—An
22 action under this subsection may not be
23 brought more than 6 years after the date
24 on which the violation reported in subpara-
25 graph (A) is committed, or more than 3

1 years after the date when facts material to
2 the right of action are known or reasonably
3 should have been known by the whistle-
4 blower, but in no event after 10 years after
5 the date on which the violation is com-
6 mitted.

7 “(2) CONFIDENTIALITY.—

8 “(A) INFORMATION PROVIDED.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in subparagraph (B), all information
11 provided to the Commission by a whistle-
12 blower shall be confidential and privileged
13 as an evidentiary matter (and shall not be
14 subject to civil discovery or other legal
15 process) in any proceeding in any Federal
16 or State court or administrative agency,
17 and shall be exempt from disclosure, in the
18 hands of a department or agency of the
19 Federal Government, under section 552 of
20 title 5, United States Code (commonly
21 known as the ‘Freedom of Information
22 Act’) or otherwise, unless and until re-
23 quired to be disclosed to a defendant or re-
24 spondent in connection with a public pro-

1 ceeding instituted by the Commission or
2 any entity described in subparagraph (B).

3 “(ii) CONSTRUCTION.—For purposes
4 of section 552 of title 5, United States
5 Code, this paragraph shall be considered a
6 statute described in subsection (b)(3)(B).

7 “(iii) EFFECT.—Nothing herein is in-
8 tended to limit the Attorney General’s abil-
9 ity to present such evidence to a grand
10 jury or to share such evidence with poten-
11 tial witnesses or defendants in the course
12 of an ongoing criminal investigation.

13 “(B) AVAILABILITY TO GOVERNMENT
14 AGENCIES.—Without the loss of its status as
15 confidential and privileged in the hands of the
16 Commission, all information referred to in sub-
17 paragraph (A) may, in the discretion of the
18 Commission, when determined by the Commis-
19 sion to be necessary or appropriate to accom-
20 plish the purposes of this Act and protect cus-
21 tomers, be made available to—

22 “(i) the Department of Justice;

23 “(ii) an appropriate department or
24 agency of the Federal Government, acting
25 within the scope of its jurisdiction;

1 “(iii) a registered entity, registered
2 futures association, or self-regulatory orga-
3 nization as defined in section 3(a) of the
4 Securities Exchange Act of 1934 (15
5 U.S.C. 78c(a));

6 “(iv) a State attorney general in con-
7 nection with any criminal investigation;

8 “(v) an appropriate department or
9 agency of any State, acting within the
10 scope of its jurisdiction; and

11 “(vi) a foreign futures authority,
12 each of which shall maintain such information
13 as confidential and privileged, in accordance
14 with the requirements in subparagraph (A).

15 “(3) RIGHTS RETAINED.—Nothing in this sec-
16 tion shall be deemed to diminish the rights, privi-
17 leges, or remedies of any whistleblower under any
18 Federal or State law, or under any collective bar-
19 gaining agreement.

20 “(h) RULEMAKING AUTHORITY.—The Commission
21 shall have the authority to issue such rules and regulations
22 as may be necessary or appropriate to implement the pro-
23 visions of this section consistent with the purposes of this
24 section.

25 “(i) DEFINITIONS.—In this section:

1 “(1) MONETARY JUDGMENT.—The term ‘mone-
2 tary judgment’, when used with respect to any judi-
3 cial or administrative action, means any monies (in-
4 cluding but not limited to penalties, disgorgement,
5 restitution, and interest) ordered to be paid as a re-
6 sult of such action or any settlement of such action.

7 “(2) ORIGINAL INFORMATION.—The term
8 ‘original information’ means information that is—

9 “(A) based on the direct and independent
10 knowledge or analysis of a whistleblower;

11 “(B) not known to the Commission from
12 any other source; and

13 “(C) not based on allegations in a judicial
14 or administrative hearing, in a governmental re-
15 port, hearing, audit, or investigation, or from
16 the news media, unless the whistleblower is the
17 initial source of the information that resulted in
18 the judicial or administrative hearing, govern-
19 mental report, hearing, audit, or investigation,
20 or the news media’s report on the allegations.

21 “(3) RELATED ACTION.—The term ‘related ac-
22 tion’, when used with respect to any judicial or ad-
23 ministrative action brought by the Commission
24 under this Act, means any judicial or administrative
25 action brought by an entity described in subsection

1 (g)(2)(B) that is based upon the same original infor-
2 mation voluntarily provided by a whistleblower that
3 led to the successful resolution of the Commission
4 action.

5 “(4) SUCCESSFUL RESOLUTION.—The term
6 ‘successful resolution’, when used with respect to
7 any judicial or administrative action brought by the
8 Commission under this Act, includes any settlement
9 of such action.

10 “(5) WHISTLEBLOWER.—The term ‘whistle-
11 blower’ means an individual, or 2 or more individ-
12 uals acting jointly, who submit information to the
13 Commission as provided in this section.

14 “(j) IMPLEMENTING RULES.—The Commission shall
15 issue final rules or regulations implementing the provi-
16 sions of this section no later than 270 days after the date
17 of enactment of the Wall Street Transparency and Ac-
18 countability Act of 2010.

19 “(k) ORIGINAL INFORMATION.—Information sub-
20 mitted to the Commission by a whistleblower in accord-
21 ance with rules or regulations implementing the provisions
22 of this section shall not lose its status as original informa-
23 tion, as defined in subsection (i)(1), solely because the
24 whistleblower submitted such information prior to the ef-
25 fective date of such rules or regulations, provided such in-

1 formation was submitted after the date of enactment of
2 the Wall Street Transparency and Accountability Act of
3 2010.

4 “(l) AWARDS.—A whistleblower may receive an award
5 pursuant to this section regardless of whether any viola-
6 tion of a provision of this Act, or a rule or regulation
7 thereunder, underlying the judicial or administrative ac-
8 tion upon which the award is based occurred prior to the
9 date of enactment of the Wall Street Transparency and
10 Accountability Act of 2010.

11 “(m) PROVISION OF FALSE INFORMATION.—A whis-
12 tleblower who knowingly and willfully makes any false, fic-
13 titious, or fraudulent statement or representation, or who
14 makes or uses any false writing or document knowing the
15 same to contain any false, fictitious, or fraudulent state-
16 ment or entry, shall not be entitled to an award under
17 this section and shall be subject to prosecution under sec-
18 tion 1001 of title 18, United States Code.”.

19 **SEC. 138. CONFORMING AMENDMENTS.**

20 (a) Section 2(e)(1) of the Commodity Exchange Act
21 (7 U.S.C. 2(e)(1)) is amended, in the matter preceding
22 subparagraph (A), by striking “5a (to the extent provided
23 in section 5a(g)),”.

24 (b) Section 4d of the Commodity Exchange Act (7
25 U.S.C. 6d) (as amended by section 114) is amended—

1 (1) in subsection (a)—

2 (A) in the matter preceding paragraph

3 (1)—

4 (i) by striking “engage as” and insert-
5 ing “be a”; and

6 (ii) by striking “or introducing
7 broker” and all that follows through “or
8 derivatives transaction execution facility”;

9 (B) in paragraph (1), by striking “or in-
10 troducing broker”; and

11 (C) in paragraph (2), by striking “if a fu-
12 tures commission merchant,”; and

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

14 “(g) It shall be unlawful for any person to be an in-
15 troducing broker unless such person shall have registered
16 under this Act with the Commission as an introducing
17 broker and such registration shall not have expired nor
18 been suspended nor revoked.”.

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

21 (1) in subsection (a)(1)—

22 (A) by striking “, 5a(d),”; and

23 (B) by striking “and section (2)(h)(7) with
24 respect to significant price discovery con-
25 tracts,”; and

1 (2) in subsection (f)(1), by striking “section
2 4d(c) of this Act” and inserting “section 4d(e)”.

3 (d) Section 5e of the Commodity Exchange Act (7
4 U.S.C. 7b) is amended by striking “or revocation of the
5 right of an electronic trading facility to rely on the exemp-
6 tion set forth in section 2(h)(3) with respect to a signifi-
7 cant price discovery contract,”.

8 (e) Section 6(b) of the Commodity Exchange Act (7
9 U.S.C. 8(b)) is amended in the first sentence by striking
10 “, or to revoke the right of an electronic trading facility
11 to rely on the exemption set forth in section 2(h)(3) with
12 respect to a significant price discovery contract,”.

13 (f) Section 12(e)(2)(B) of the Commodity Exchange
14 Act (7 U.S.C. 16(e)(2)(B)) is amended—

15 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)
16 of this Act” and inserting “section 2(c), 2(f), or 2(i)
17 of this Act”; and

18 (2) by striking “2(h) or”.

19 (g) Section 17(r)(1) of the Commodity Exchange Act
20 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)
21 of this Act” and inserting “section 4d(e)”.

22 (h) Section 22(b)(1)(A) of the Commodity Exchange
23 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-
24 tion 2(h)(7) or”.

1 (i) Section 408(2)(C) of the Federal Deposit Insur-
2 ance Corporation Improvement Act of 1991 (12 U.S.C.
3 4421(2)(C)) is amended—

4 (1) by striking “section 2(c), 2(d), 2(f), or
5 (2)(g) of such Act” and inserting “section 2(c), 2(f),
6 or 2(i) of that Act”; and

7 (2) by striking “2(h) or”.

8 **SEC. 139. EFFECTIVE DATE.**

9 Unless otherwise provided in this title, this title shall
10 take effect on the date that is 180 days after the date
11 of enactment of this Act.

12 **TITLE II—REGULATION OF SE-**
13 **CURITY-BASED SWAP MAR-**
14 **KETS**

15 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
16 **CHANGE ACT OF 1934.**

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

19 (1) in subparagraphs (A) and (B) of paragraph
20 (5), by inserting “(but not security-based swaps,
21 other than security-based swaps with or for persons
22 that are not eligible contract participants)” after
23 “securities” each place that term appears;

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

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

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

15 (5) in paragraph (39)—

16 (A) by striking “or government securities
17 dealer” and adding “government securities
18 dealer, security-based swap dealer or major se-
19 curity-based swap participant” in its place in
20 subparagraph (B)(i)(I);

21 (B) by adding “security-based swap dealer,
22 major security-based swap participant,” after
23 “government securities dealer,” in subpara-
24 graph (B)(i)(II);

1 (C) by striking “or government securities
2 dealer” and adding “government securities
3 dealer, security-based swap dealer or major se-
4 curity-based swap participant” in its place in
5 subparagraph (C); and

6 (D) by adding “security-based swap dealer,
7 major security-based swap participant,” after
8 “government securities dealer,” in subpara-
9 graph (D); and

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

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

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

19 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
20 PANT.—

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

24 “(i) maintains a substantial position
25 in security-based swaps for any of the

1 major security-based swap categories as
2 determined by the Commission (excluding
3 positions held for hedging or mitigating
4 commercial risk); or

5 “(ii) whose outstanding security-based
6 swaps create substantial counterparty ex-
7 posure that could have serious adverse ef-
8 fects on the financial stability of the
9 United States banking system or financial
10 markets; or

11 “(iii)(I) is a financial entity that is
12 highly leveraged relative to the amount of
13 capital it holds; and

14 “(II) maintains a substantial position
15 in outstanding security-based swaps in any
16 major security-based swap category as de-
17 termined by the Commission.

18 “(iv) DEFINITION OF SUBSTANTIAL POSI-
19 TION.—For purposes of subparagraph (A), the
20 Commission shall define by rule or regulation
21 the term ‘substantial position’ at the threshold
22 that the Commission determines to be prudent
23 for the effective monitoring, management, and
24 oversight of entities that are systemically im-

1 portant or can significantly impact the financial
2 system of the United States.

3 “(v) SCOPE OF DESIGNATION.—For pur-
4 poses of subparagraph (A), a person may be
5 designated as a major security-based swap par-
6 ticipant for 1 or more categories of security-
7 based swaps without being classified as a major
8 security-based swap participant for all classes
9 of security-based swaps.

10 “(68) 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—

15 “(i) would be a swap under section
16 1a(35) of the Commodity Exchange Act;
17 and

18 “(ii) is based on—

19 “(I) an index that is a narrow-
20 based security index, including any in-
21 terest therein or on the value thereof;

22 “(II) a single security or loan, in-
23 cluding any interest therein or on the
24 value thereof; or

1 “(III) the occurrence, nonoccur-
2 rence, or extent of the occurrence of
3 an event relating to a single issuer of
4 a security or the issuers of securities
5 in a narrow-based security index, pro-
6 vided that such event directly affects
7 the financial statements, financial
8 condition, or financial obligations of
9 the issuer.

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

1 “(C) EXCLUSIONS.—The term ‘security-
2 based swap’ does not include any agreement,
3 contract, or transaction that meets the defini-
4 tion of a security-based swap only because it
5 references, is based upon, or settles through the
6 transfer, delivery, or receipt of an exempted se-
7 curity under paragraph (12), as in effect on the
8 date of enactment of the Futures Trading Act
9 of 1982 (other than any municipal security as
10 defined in paragraph (29) as in effect on the
11 date of enactment of the Futures Trading Act
12 of 1982), unless such agreement, contract, or
13 transaction is of the character of, or is com-
14 monly known in the trade as, a put, call, or
15 other option; or

16 “(D) MIXED SWAPS.—The term ‘security
17 based swap’ does not include any agreement,
18 contract, or transaction that is determined to
19 be a swap pursuant to paragraph (47)(F) of
20 section 1a of the Commodity Exchange Act (7
21 U.S.C. 1a).

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

1 “(70) PERSON ASSOCIATED WITH A SECURITY-
2 BASED SWAP DEALER OR MAJOR SECURITY-BASED
3 SWAP PARTICIPANT.—The term ‘person associated
4 with a security-based swap dealer or major security-
5 based swap participant’ or ‘associated person of a
6 security-based swap dealer or major security-based
7 swap participant’ means any partner, officer, direc-
8 tor, or branch manager of such security-based swap
9 dealer or major security-based swap participant (or
10 any person occupying a similar status or performing
11 similar functions), any person directly or indirectly
12 controlling, controlled by, or under common control
13 with such security-based swap dealer or major secu-
14 rity-based swap participant, or any employee of such
15 security-based swap dealer or major security-based
16 swap participant, except that any person associated
17 with a security-based swap dealer or major security-
18 based swap participant whose functions are solely
19 clerical or ministerial shall not be included in the
20 meaning of such term other than for purposes of
21 section 15F(e)(2).

22 “(71) SECURITY-BASED SWAP DEALER.—

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

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

3 “(ii) makes a market in security-based
4 swaps;

5 “(iii) regularly engages in the pur-
6 chase and sale of security-based swaps in
7 the ordinary course of a business;

8 “(iv) regularly accepts either side of
9 security-based swaps transaction in the or-
10 dinary course of business; or

11 “(v) engages in any activity causing it
12 to be commonly known in the trade as a
13 dealer or market maker in security-based
14 swaps.

15 “(B) DESIGNATION BY TYPE OR CLASS.—
16 A person may be designated a security-based
17 swap dealer for a single type or single class or
18 category of security-based swap and considered
19 not to be a security-based swap dealer for other
20 types, classes, or categories of security-based
21 swaps.

22 “(72) 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 “(73) BOARD.—The term ‘Board’ means the
2 Board of Governors of the Federal Reserve System.

3 “(74) PRUDENTIAL REGULATOR.—The term
4 ‘prudential regulator’ has the same meaning as in
5 section 1a of the Commodity Exchange Act (7
6 U.S.C. 1a).

7 “(75) SWAP DATA REPOSITORY.—The term
8 ‘swap data repository’ means any person that col-
9 lects, calculates, prepares, or maintains information
10 or records with respect to transactions or positions
11 in, or the terms and conditions of, security-based
12 swaps entered into by third parties.

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

16 “(77) SWAP EXECUTION FACILITY.—The term
17 ‘swap execution facility’ means a trading facility in
18 which multiple participants have the ability to exe-
19 cute or trade security-based swaps by accepting bids
20 and offers made by other participants that are open
21 to multiple participants in the facility or system, or
22 confirmation facility, that—

23 “(A) facilitates the execution of security-
24 based swaps between persons; and

25 “(B) is not a designated contract market.

1 “(78) BROAD-BASED SECURITY INDEX.—The
2 term ‘broad-based security index’ has the same
3 meaning as in section 1a of the Commodity Ex-
4 change Act (7 U.S.C. 1a).”.

5 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
6 Securities and Exchange Commission may, by rule, fur-
7 ther define the terms “security-based swap”, “security-
8 based swap dealer”, “major security-based swap partici-
9 pant”, and “eligible contract participant” with regard to
10 security-based swaps (as such terms are defined in the
11 amendments made by subsection (a)) for the purpose of
12 including transactions and entities that have been struc-
13 tured to evade this title or the amendments made by this
14 title.

15 (c) OTHER INCORPORATED DEFINITIONS.—Except
16 as the context otherwise requires, in this title, the terms
17 “prudential regulator”, “swap”, “swap dealer”, “major
18 swap participant”, “swap data repository”, “associated
19 person of a swap dealer or major swap participant”, “eligi-
20 ble contract participant”, “swap execution facility”,
21 “broad-based security index”, “security-based swap”, “se-
22 curity-based swap dealer”, “major security-based swap
23 participant”, “swap data repository”, and “associated per-
24 son of a security-based swap dealer or major security-
25 based swap participant” have the same meanings as in

1 section 1a of the Commodity Exchange Act (7 U.S.C. 1a),
2 as amended by this Act.

3 **SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SE-**
4 **CURITY-BASED SWAPS.**

5 (a) REPEAL.—

6 (1) IN GENERAL.—Section 206B of the
7 Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is re-
8 pealed.

9 (2) CONFORMING AMENDMENT.—Section 206C
10 of the Gramm-Leach-Bliley Act (15 U.S.C. 78c
11 note) is amended by striking “(as defined in section
12 206B)”.

13 (b) CONFORMING AMENDMENTS TO THE SECURITIES
14 ACT OF 1933.—The Securities Act of 1933 (15 U.S.C.
15 77a et seq.) is amended—

16 (1) in section 2A(b) (15 U.S.C. 77b–1), by
17 striking “(as defined in section 206B of the Gramm-
18 Leach-Bliley Act)” each place that term appears;
19 and

20 (2) in section 17 (15 U.S.C. 77q)—

21 (A) in subsection (a)—

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

1 (ii) by striking “206B of the Gramm-
2 Leach-Bliley Act” and inserting “3(a) of
3 the Securities Exchange Act of 1934”; and
4 (B) in subsection (d), by striking “206B of
5 the Gramm-Leach-Bliley Act” and inserting
6 “3(a) of the Securities Exchange Act of 1934”.

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

10 (1) in section 3A (15 U.S.C. 78c–1), by striking
11 “(as defined in section 206B of the Gramm-Leach-
12 Bliley Act)” each place that term appears; and

13 (2) in section 9 (15 U.S.C. 78i(a))—

14 (A) in subsection (a), by striking para-
15 graphs (2) through (5) and inserting the fol-
16 lowing:

17 “(2) To effect, alone or with one or more other per-
18 sons, a series of transactions in any security registered
19 on a national securities exchange or in connection with
20 any security-based swap with respect to such security cre-
21 ating actual or apparent active trading in such security,
22 or raising or depressing the price of such security, for the
23 purpose of inducing the purchase or sale of such security
24 by others.

1 “(3) If a dealer, broker, security-based swap dealer,
2 major security-based swap participant, or other person
3 selling or offering for sale or purchasing or offering to
4 purchase the security, or a security-based swap with re-
5 spect to such security, to induce the purchase or sale of
6 any security registered on a national securities exchange
7 or any security-based swap with respect to such security
8 by the circulation or dissemination in the ordinary course
9 of business of information to the effect that the price of
10 any such security will or is likely to rise or fall because
11 of market operations of any one or more persons con-
12 ducted for the purpose of raising or depressing the price
13 of such security.

14 “(4) If a dealer, broker, security-based swap dealer,
15 major security-based swap participant, or other person
16 selling or offering for sale or purchasing or offering to
17 purchase the security, or a security-based swap with re-
18 spect to such security, to make, regarding any security
19 registered on a national securities exchange or any secu-
20 rity-based swap with respect to such security, for the pur-
21 pose of inducing the purchase or sale of such security or
22 such security-based swap, any statement which was at the
23 time and in the light of the circumstances under which
24 it was made, false or misleading with respect to any mate-

1 rial fact, and which that person knew or had reasonable
2 ground to believe was so false or misleading.

3 “(5) For a consideration, received directly or indi-
4 rectly from a broker, dealer, security-based swap dealer,
5 major security-based swap participant, or other person
6 selling or offering for sale or purchasing or offering to
7 purchase the security, or a security-based swap with re-
8 spect to such security, to induce the purchase of any secu-
9 rity registered on a national securities exchange or any
10 security-based swap with respect to such security by the
11 circulation or dissemination of information to the effect
12 that the price of any such security will or is likely to rise
13 or fall because of the market operations of any one or
14 more persons conducted for the purpose of raising or de-
15 pressing the price of such security.”;

16 (3) in subsection (i), by striking “(as defined in
17 section 206B of the Gramm-Leach-Bliley Act)”;

18 (4) in section 10 (15 U.S.C. 78j), by striking
19 “(as defined in section 206B of the Gramm-Leach-
20 Bliley Act)” each place that term appears;

21 (5) in section 15—

22 (A) in subsection (c)(1)(A), by striking “,
23 or any security-based swap agreement (as de-
24 fined in section 206B of the Gramm-Leach-Bli-
25 ley Act),”; and

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

5 (6) in subsection (i) by striking “(as defined in
6 section 206B of the Gramm-Leach-Bliley Act)”;

7 (7) in section 16 (15 U.S.C. 78p)—

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

11 (B) in subsection (b), by striking “(as de-
12 fined in section 206B of the Gramm-Leach-Bli-
13 ley Act)” each place that term appears; and

14 (C) in subsection (g), by striking “(as de-
15 fined in section 206B of the Gramm-Leach-Bli-
16 ley Act)”;

17 (8) in section 20 (15 U.S.C. 78t)—

18 (A) in subsection (d), by striking “(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)”;

21 (B) in subsection (f), by striking “(as de-
22 fined in section 206B of the Gramm-Leach-Bli-
23 ley Act)”;

24 (9) in section 21A (15 U.S.C. 78u-1)—

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

4 (B) in subsection (g), by striking “(as de-
5 fined in section 206B of the Gramm-Leach-Bli-
6 ley Act)”.

7 **SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE**

8 **ACT OF 1934.**

9 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
10 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
11 is amended by inserting after section 3A:

12 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

13 **“(a) CLEARING REQUIREMENT.—**

14 **“(1) OPEN ACCESS.—**Each clearing agency reg-
15 istered under this title (in this section referred to as
16 a ‘registered clearing agency’) shall—

17 **“(A) prescribe that all security-based**
18 **swaps with the same terms and conditions are**
19 **economically equivalent and may be offset with**
20 **each other within the registered clearing agen-**
21 **cy; and**

22 **“(B) provide for nondiscriminatory clear-**
23 **ing of a security-based swap executed bilaterally**
24 **or on or through the rules of an unaffiliated na-**

1 tional securities exchange or swap execution fa-
2 cility.

3 “(2) SECURITY-BASED SWAPS SUBJECT TO
4 MANDATORY CLEARING REQUIREMENT.—

5 “(A) IN GENERAL.—In accordance with
6 subparagraph (C), the Commission shall, con-
7 sistent with the public interest, adopt rules
8 under the expedited process described in sub-
9 paragraph (B) to establish criteria for deter-
10 mining that a security-based swap, or any
11 group, category, type, or class of security-based
12 swap is required to be cleared.

13 “(B) EXPEDITED RULEMAKING AUTHOR-
14 ITY.—

15 “(i) PROCEDURE.—The promulgation
16 of regulations under subparagraph (A) and
17 issuance of orders under subparagraph
18 (F)(ii)(II)(aa) may be made without re-
19 gard to—

20 “(I) the notice and comment pro-
21 visions of section 553 of title 5,
22 United States Code; and

23 “(II) chapter 35 of title 44,
24 United States Code (commonly known
25 as the ‘Paperwork Reduction Act’).

1 “(ii) AGENCY RULEMAKING.—In car-
2 rying out subparagraph (A), and in issuing
3 orders under subparagraph (F)(ii)(II)(aa),
4 the Commission shall use the authority
5 provided under section 808 of title 5,
6 United States Code.

7 “(C) FACTORS.—In carrying out subpara-
8 graph (A), the Commission may consider—

9 “(i) the volume and open interest of
10 transactions;

11 “(ii) as compared to other agree-
12 ments, contracts, or transactions that are
13 centrally cleared, whether any material dif-
14 ferences exist;

15 “(iii) the impact on the mitigation of
16 systemic risk, taking into account the size
17 of the contract; or

18 “(iv) any other factor that the Com-
19 mission determines to be appropriate.

20 “(D) COMMISSION REVIEW OF NEW SECUR-
21 ITY-BASED SWAPS.—The Commission—

22 “(i) shall review each security-based
23 swap, or any group, category, type, or class
24 of security-based swap for which a reg-
25 istered clearing agency notifies the Com-

1 mission that the registered clearing agency
2 plans to list for clearing after the date of
3 enactment of this subsection (‘new secu-
4 rity-based swap’);

5 “(ii) may review any security-based
6 swap, or any group, category, type, or class
7 of security-based swap that—

8 “(I) is not currently listed or pro-
9 posed by a registered clearing agency;
10 and

11 “(II) the Commission determines
12 to be appropriate for review;

13 “(iii) shall determine by order whether
14 the new security-based swap, or group, cat-
15 egory, type, or class of security-based
16 swaps being listed for clearing is required
17 to be cleared based on the criteria estab-
18 lished in the rule adopted by the Commis-
19 sion under subparagraph (A);

20 “(iv) shall provide a public comment
21 period regarding the determination of the
22 Commission as to whether the clearing re-
23 quirements shall apply to the new security-
24 based swap or group, category, type, or

1 class of security-based swaps that are list-
2 ed for clearing; and

3 “(v) not later than 90 days after the
4 date on which a registered clearing agency
5 certifies to the Commission that the reg-
6 istered clearing agency will list, or receives
7 approval from the Commission to list, the
8 new security-based swap, or group, cat-
9 egory, type, or class of security-based
10 swaps for clearing, shall make a deter-
11 mination under clause (iii).

12 “(E) EFFECT.—Nothing in subparagraph
13 (D) affects the ability of the registered clearing
14 agency described in that subparagraph to list
15 for permissive clearing any security-based swap,
16 or group, category, type, or class of security-
17 based swaps.

18 “(F) MANDATORY CLEARING.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in paragraph (3), it shall be unlawful
21 to enter into a security-based swap that is
22 required to be cleared unless such security-
23 based swap shall be submitted for clearing.

1 “(ii) REQUIREMENTS.—The security-
2 based swap shall be submitted for clearing
3 if—

4 “ (I) the security-based swap
5 meets the criteria of the rules adopted
6 by the Commission pursuant to sub-
7 paragraph (A);

8 “ (II) the Commission determines
9 by order that—

10 “ (aa) an existing security-
11 based swap or group, category,
12 type, or class of security-based
13 swaps listed for clearing by a
14 registered clearing agency as of
15 the date of enactment of this
16 subparagraph is required to be
17 cleared; or

18 “ (bb) a new security-based
19 swap or group, category, type, or
20 class of security-based swaps sub-
21 mitted under subparagraph (D)
22 is required to be cleared; and

23 “ (III) the security-based swap is
24 listed for clearing by a registered
25 clearing agency.

1 “(G) PREVENTION OF EVASION.—

2 “(i) IN GENERAL.—The Commission
3 may prescribe rules under this subsection
4 (and issue interpretations of rules pre-
5 scribed under this subsection) as deter-
6 mined by the Commission to be necessary
7 to prevent evasions of the mandatory clear-
8 ing requirements under this title.

9 “(ii) DUTY OF COMMISSION TO INVES-
10 TIGATE AND TAKE CERTAIN ACTIONS.—To
11 the extent the Commission finds that a
12 particular security-based swap, group, cat-
13 egory, type, or class of security-based
14 swaps would otherwise be subject to man-
15 datory clearing but no registered clearing
16 agency has listed the security-based swap,
17 group, category, type, or class of security-
18 based swaps for clearing, the Commission
19 shall—

20 “(I) investigate the facts and cir-
21 cumstances surrounding the situation;
22 and

23 “(II) issue a public report re-
24 garding the security-based swap in
25 question and take such actions as the

1 Commission determines to be nec-
2 essary and in the public interest.

3 “(H) STAY OF CLEARING REQUIRE-
4 MENT.—

5 “(i) IN GENERAL.—The Commission
6 may, on its own initiative or upon applica-
7 tion of a counterparty to a security-based
8 swap, stay the mandatory clearing require-
9 ment described in subparagraph (F) until
10 the date on which the Commission com-
11 pletes a review of—

12 “(I) the terms of the security-
13 based swap or the group, category,
14 type, or class of security-based swaps;
15 and

16 “(II) the clearing arrangement.

17 “(ii) DEADLINE.—Not later than 30
18 days after the date on which the Commis-
19 sion issues a stay under clause (i), the
20 Commission shall make a determination in
21 accordance with clause (iii).

22 “(iii) DETERMINATION.—Upon com-
23 pletion of the review carried out under
24 clause (i), the Commission may—

1 “(I) determine, unconditionally
2 or subject to such terms and condi-
3 tions as the Commission determines to
4 be appropriate, that the security-
5 based swap, or group, category, type,
6 or class of security-based swaps, must
7 be cleared pursuant to this subsection;
8 or

9 “(II) determine that the clearing
10 mandate described in subparagraph
11 (F) shall not apply to the security-
12 based swap, group, category, type, or
13 class of security-based swaps.

14 “(3) END USER CLEARING EXEMPTION.—

15 “(A) DEFINITION OF COMMERCIAL END
16 USER.—In this paragraph, the term ‘commer-
17 cial end user’ means any person (not including
18 financial services or any other financial entity)
19 who, as its primary business activity owns,
20 uses, produces, processes, manufacturers, dis-
21 tributes, merchandises, or markets services or
22 commodities (which shall include coal, natural
23 gas, electricity, ethanol, crude oil, distillates,
24 and other hydrocarbons) either individually or
25 in a fiduciary capacity.

1 “(B) END USER CLEARING EXEMPTION.—

2 “(i) IN GENERAL.—Subject to clause
3 (ii), in the event that a security-based
4 swap is subject to the mandatory clearing
5 requirement under paragraph (2), and 1 of
6 the counterparties to the security-based
7 swap is a commercial end user that
8 counterparty—

9 “(I)(aa) may elect not to clear
10 the security-based swap, as required
11 under paragraph (2); or

12 “(bb) may elect to require clear-
13 ing of the security-based swap; and

14 “(II) if the end user makes an
15 election under subclause (I)(bb), shall
16 have the sole right to select the clear-
17 ing agency at which the security-based
18 swap will be cleared.

19 “(ii) LIMITATION.—A commercial end
20 user may only make an election under
21 clause (i) if the end user is using the secu-
22 rity-based swap to hedge commercial risk.

23 “(C) TREATMENT OF AFFILIATES.—

24 “(i) IN GENERAL.—An affiliate of a
25 commercial end user may make an election

1 under subparagraph (B)(i) only if the affil-
2 iate uses the security-based swap to hedge
3 or mitigate the commercial risk of the com-
4 mercial end user parent or other affiliates
5 of the commercial end user.

6 “(ii) PROHIBITION RELATING TO CER-
7 TAIN AFFILIATES.—An affiliate of a com-
8 mercial end user shall not use the exemp-
9 tion under subparagraph (B) if the affil-
10 iate is—

11 “(I) a security-based swap dealer;

12 “(II) a security-based security-
13 based swap dealer;

14 “(III) a major security-based
15 swap participant;

16 “(IV) a major security-based se-
17 curity-based swap participant;

18 “(V) an issuer that would be an
19 investment company, as defined in
20 section 3 of the Investment Company
21 Act of 1940 (15 U.S.C. 80a–3), but
22 for paragraph (1) or (7) of subsection
23 (c) of that section 3 (15 U.S.C. 80a–
24 3(c));

25 “(VI) a commodity pool;

1 “(VII) a bank holding company
2 with over \$50,000,000,000 in consoli-
3 dated assets; or

4 “(VIII) an affiliate of any entity
5 described in subclauses (I) through
6 (VII).

7 “(D) ABUSE OF EXEMPTION.—The Com-
8 mission may prescribe such rules, or issue inter-
9 pretations of the rules, as the Commission de-
10 termines to be necessary to prevent abuse of the
11 exemption described in subparagraph (B).

12 “(E) OPTION TO CLEAR.—With respect to
13 any security-based swap listed for clearing by a
14 clearing agency and entered into by a security-
15 based swap dealer or a major security-based
16 swap participant with any other counterparty,
17 the counterparty—

18 “(i) may elect to require clearing of
19 the security-based swap; and

20 “(ii) if the counterparty makes an
21 election under clause (i), shall have the
22 sole right to select the clearing agency at
23 which the security-based swap will be
24 cleared.

1 “(b) AUDIT COMMITTEE APPROVAL.—Exemptions
2 from the requirements of this section to clear or trade a
3 security-based swap through a national securities ex-
4 change or security-based swap execution facility shall be
5 available to a counterparty that is an issuer of securities
6 that are registered under section 12 or that is required
7 to file reports pursuant to section 15(d), only if the
8 issuer’s audit committee has reviewed and approved its de-
9 cision to enter into security-based swaps that are subject
10 to such exemptions.

11 “(c) PUBLIC AVAILABILITY OF SECURITY-BASED
12 SWAP TRANSACTION DATA.—

13 “(1) IN GENERAL.—

14 “(A) DEFINITION OF REAL-TIME PUBLIC
15 REPORTING.—In this paragraph, the term ‘real-
16 time public reporting’ means to report data re-
17 lating to a security-based swap transaction as
18 soon as technologically practicable after the
19 time at which the security-based swap trans-
20 action has been executed.

21 “(B) PURPOSE.—The purpose of this sec-
22 tion is to authorize the Commission to make se-
23 curity-based swap transaction and pricing data
24 available to the public in such form and at such

1 times as the Commission determines appro-
2 priate to enhance price discovery.

3 “(C) GENERAL RULE.—The Commission is
4 authorized to provide by rule for the public
5 availability of security-based swap transaction
6 and pricing data as follows:

7 “(i) With respect to those security-
8 based swaps that are subject to the man-
9 datory clearing requirement described in
10 subsection (a)(2) (including those security-
11 based swaps that are exempted from those
12 requirements), the Commission shall re-
13 quire real-time public reporting for such
14 transactions.

15 “(ii) With respect to those security-
16 based swaps that are not subject to the
17 mandatory clearing requirement described
18 in subsection (a)(2), but are cleared at a
19 registered clearing agency, the Commission
20 shall require real-time public reporting for
21 such transactions.

22 “(iii) With respect to security-based
23 swaps that are not cleared at a registered
24 clearing agency and which are reported to
25 a swap data repository or the Commission

1 under subsection (a), the Commission shall
2 make available to the public, in a manner
3 that does not disclose the business trans-
4 actions and market positions of any per-
5 son, aggregate data on such security-based
6 swap trading volumes and positions.

7 “(D) REGISTERED ENTITIES AND PUBLIC
8 REPORTING.—The Commission may require
9 registered entities to publicly disseminate the
10 security-based swap transaction and pricing
11 data required to be reported under this para-
12 graph.

13 “(E) RULEMAKING REQUIRED.—With re-
14 spect to the rule providing for the public avail-
15 ability of transaction and pricing data for secu-
16 rity-based swaps described in clauses (i) and (ii)
17 of subparagraph (C), the rule promulgated by
18 the Commission shall contain provisions—

19 “(i) to ensure such information does
20 not identify the participants;

21 “(ii) to specify the criteria for deter-
22 mining what constitutes a large notional
23 security-based swap transaction (block
24 trade) for particular markets and con-
25 tracts;

1 “(iii) to specify the appropriate time
2 delay for reporting large notional security-
3 based swap transactions (block trades) to
4 the public; and

5 “(iv) that take into account whether
6 the public disclosure will materially reduce
7 market liquidity.

8 “(F) TIMELINESS OF REPORTING.—Par-
9 ties to a security-based swap (including agents
10 of the parties to a security-based swap) shall be
11 responsible for reporting security-based swap
12 transaction information to the appropriate reg-
13 istered entity in a timely manner as may be
14 prescribed by the Commission.

15 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
16 PORTING OF AGGREGATE SECURITY-BASED SWAP
17 DATA.—

18 “(A) IN GENERAL.—In accordance with
19 subparagraph (B), the Commission shall issue a
20 written report on a semiannual and annual
21 basis to make available to the public informa-
22 tion relating to—

23 “(i) the trading and clearing in the
24 major security-based swap categories; and

1 “(ii) the market participants and de-
2 velopments in new products.

3 “(B) USE; CONSULTATION.—In preparing
4 a report under subparagraph (A), the Commis-
5 sion shall—

6 “(i) use information from security-
7 based swap data repositories and clearing
8 agencies; and

9 “(ii) consult with the Office of the
10 Comptroller of the Currency, the Bank for
11 International Settlements, and such other
12 regulatory bodies as may be necessary.

13 “(C) TRANSITION RULE FOR
14 PREENACTMENT SECURITY-BASED SWAPS.—

15 “(i) SECURITY-BASED SWAPS EN-
16 TERED INTO BEFORE THE DATE OF EN-
17 ACTMENT OF THE WALL STREET TRANS-
18 PARENCY AND ACCOUNTABILITY ACT OF
19 2010.—Each security-based swap entered
20 into before the date of enactment of the
21 Wall Street Transparency and Account-
22 ability Act of 2010, the terms of which
23 have not expired as of the date of enact-
24 ment of that Act, shall be reported to a
25 registered swap data repository or the

1 Commission by a date that is not later
2 than—

3 “(I) 30 days after the date of
4 issuance of the interim final rule; or

5 “(II) such other period as the
6 Commission determines to be appro-
7 priate.

8 “(ii) COMMISSION RULEMAKING.—The
9 Commission shall promulgate an interim
10 final rule within 90 days of the date of en-
11 actment of this section providing for the
12 reporting of each security-based swap en-
13 tered into before the date of enactment as
14 referenced in clause (i).

15 “(D) EFFECTIVE DATE.—The reporting
16 provisions described in this paragraph shall be
17 effective upon the date of enactment of this sec-
18 tion.

19 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
20 CER.—

21 “(1) IN GENERAL.—Each registered clearing
22 agency and security-based swap execution facility
23 shall designate an individual to serve as a chief com-
24 pliance officer.

1 “(2) DUTIES.—The chief compliance officer
2 shall—

3 “(A) report directly to its board or to the
4 senior officer;

5 “(B) review its compliance with respect to
6 the core principles described in this title;

7 “(C) in consultation with its board, a body
8 performing a function similar thereto, or the
9 senior officer of the registered clearing agency,
10 resolve any conflicts of interest that may arise;

11 “(D) be responsible for administering each
12 policy and procedure that is required to be es-
13 tablished pursuant to this section;

14 “(E) ensure compliance with this title (in-
15 cluding regulations issued under this title) re-
16 lating to agreements, contracts, or transactions,
17 including each rule prescribed by the Commis-
18 sion under this section;

19 “(F) establish procedures for the remedi-
20 ation of noncompliance issues identified by the
21 compliance officer through any—

22 “(i) compliance office review;

23 “(ii) look-back;

24 “(iii) internal or external audit find-
25 ing;

1 “(iv) self-reported error; or

2 “(v) validated complaint; and

3 “(G) establish and follow appropriate pro-
4 cedures for the handling, management response,
5 remediation, retesting, and closing of non-
6 compliance issues.

7 “(3) ANNUAL REPORTS.—

8 “(A) IN GENERAL.—In accordance with
9 rules prescribed by the Commission, the chief
10 compliance officer shall annually prepare and
11 sign a report that contains a description of—

12 “(i) the compliance of the registered
13 clearing agency or security-based swap exe-
14 cution facility of the compliance officer
15 with respect to this title (including regula-
16 tions under this title); and

17 “(ii) each policy and procedure of the
18 registered clearing agency of the compli-
19 ance officer (including the code of ethics
20 and conflict of interest policies of the reg-
21 istered clearing agency).

22 “(B) REQUIREMENTS.—A compliance re-
23 port under subparagraph (A) shall—

24 “(i) accompany each appropriate fi-
25 nancial report of the registered clearing

1 agency that is required to be furnished to
2 the Commission pursuant to this section;
3 and

4 “(ii) include a certification that, under
5 penalty of law, the compliance report is ac-
6 curate and complete.”.

7 (b) CLEARING AGENCY REQUIREMENTS.—Section
8 17A of the Securities Exchange Act of 1934 (15 U.S.C.
9 78q) is amended by adding at the end the following new
10 subsections:

11 “(g) REGISTRATION REQUIREMENT.—It shall be un-
12 lawful for a clearing agency, unless registered with the
13 Commission, directly or indirectly to make use of the mails
14 or any means or instrumentality of interstate commerce
15 to perform the functions of a clearing agency with respect
16 to a security-based swap.

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

21 “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-
22 ING SWAP TRANSACTIONS.—To be registered and to main-
23 tain registration as a clearing agency that clears swap
24 transactions, a clearing agency shall comply with such
25 standards as the Commission may establish by rule. In

1 establishing any such standards, and in the exercise of its
2 oversight of such a clearing agency pursuant to this title,
3 the Commission may conform such standards or oversight
4 to reflect evolving United States and international stand-
5 ards. Except where the Commission determines otherwise
6 by rule or regulation, a clearing agency shall have reason-
7 able discretion in establishing the manner in which it com-
8 plies with any such standards.

9 “(j) RULES.—The Commission shall adopt rules gov-
10 erning persons that are registered as clearing agencies for
11 security-based swaps under this title.

12 “(k) EXEMPTIONS.—

13 “(1) IN GENERAL.—The Commission may ex-
14 empt, conditionally or unconditionally, a clearing
15 agency from registration under this section for the
16 clearing of security-based swaps, if the Commission
17 finds that such clearing agency is subject to com-
18 parable, comprehensive supervision and regulation
19 on a consolidated basis and which is a derivatives
20 clearing organization registered under the Com-
21 modity Exchange Act with the Commodity Futures
22 Trading Commission.

23 “(2) DERIVATIVES CLEARING ORGANIZA-
24 TIONS.—A person that is required to be registered
25 as a derivatives clearing organization under the

1 Commodity Exchange Act, whose principal business
2 is clearing commodity futures and options on com-
3modity futures transactions and swaps and which is
4 a derivatives clearing organization registered with
5 the Commodity Futures Trading Commission under
6 the Commodity Exchange Act (7 U.S.C. 1 et seq.),
7 shall be unconditionally exempt from registration
8 under this section solely for the purpose of clearing
9 security-based swaps, unless the Commission finds
10 that such derivatives clearing organization is not
11 subject to comparable, comprehensive supervision
12 and regulation by the Commodity Futures Trading
13 Commission.”.

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

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

18 “(a) EXECUTION TRANSPARENCY.—A security-based
19 swap that is subject to the clearing requirement of section
20 3B shall not be traded except on or through a national
21 securities exchange or on or through an swap execution
22 facility registered under section 5h, that makes the secu-
23 rity-based swap available for trading.

24 “(b) EXCEPTIONS.—The requirement of subsection
25 (a) shall not apply to a security-based swap if no national

1 securities exchange or swap execution facility makes the
2 security-based swap available for trading.

3 “(c) **REQUIRED REPORTING.**—If the exception of
4 subsection (b) applies, and there is no national securities
5 exchange or security-based swap execution facility that
6 makes the security-based security-based swap available to
7 trade, the counterparties shall comply with any record-
8 keeping and transaction reporting requirements as may be
9 prescribed by the Commission with respect to security-
10 based security-based swaps subject to the requirements of
11 subsection (a).”.

12 (d) **SECURITY-BASED SWAP EXECUTION FACILI-**
13 **TIES.**—The Securities Exchange Act of 1934 (15 U.S.C.
14 78a et seq.) is amended by inserting after section 3B (as
15 added by subsection (a) of this section) the following:

16 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

17 “(a) **REGISTRATION.**—

18 “(1) **IN GENERAL.**—No person may operate a
19 facility for the trading or processing of security-
20 based swaps, unless the facility is registered as a
21 swap execution facility or as a national securities ex-
22 change under this section.

23 “(2) **DUAL REGISTRATION.**—Any person that is
24 registered as a swap execution facility under this
25 section shall register with the Commission regardless

1 of whether the person also is registered with the
2 Commodity Futures Trading Commission as a swap
3 execution facility.

4 “(b) TRADING AND TRADE PROCESSING.—A swap
5 execution facility that is registered under subsection (a)
6 may—

7 “(1) make available for trading any security-
8 based swap; and

9 “(2) facilitate trade processing of any security-
10 based swap.

11 “(c) TRADING BY CONTRACT MARKETS.—A board of
12 trade that operates a contract market shall, to the extent
13 that the board of trade also operates a swap execution fa-
14 cility and uses the same electronic trade execution system
15 for trading on the national securities exchange and the
16 swap execution facility, identify whether the electronic
17 trading is taking place on the national securities exchange
18 or the swap execution facility.

19 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
20 CILITIES.—

21 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

22 “(A) IN GENERAL.—To be registered, and
23 maintain registration, as a swap execution facil-
24 ity, the swap execution facility shall comply
25 with—

1 “(i) the core principles described in
2 this subsection; and

3 “(ii) any requirement that the Com-
4 mission may impose by rule or regulation.

5 “(B) REASONABLE DISCRETION OF SWAP
6 EXECUTION FACILITY.—Unless otherwise deter-
7 mined by the Commission by rule or regulation,
8 a swap execution facility described in subpara-
9 graph (A) shall have reasonable discretion in
10 establishing the manner in which the swap exe-
11 cution facility complies with the core principles
12 described in this subsection.

13 “(2) COMPLIANCE WITH RULES.—A swap exe-
14 cution facility shall—

15 “(A) monitor and enforce compliance with
16 any rule of the swap execution facility, includ-
17 ing—

18 “(i) the terms and conditions of the
19 security-based swaps traded or processed
20 on or through the swap execution facility;
21 and

22 “(ii) any limitation on access to the
23 swap execution facility; and

24 “(B) establish and enforce trading, trade
25 processing, and participation rules that will

1 deter abuses and have the capacity to detect,
2 investigate, and enforce those rules, including
3 means—

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

6 “(ii) to capture information that may
7 be used in establishing whether rule viola-
8 tions have occurred.

9 “(3) SECURITY-BASED SWAPS NOT READILY
10 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
11 tion facility shall permit trading only in security-
12 based swaps that are not readily susceptible to ma-
13 nipulation.

14 “(4) MONITORING OF TRADING AND TRADE
15 PROCESSING.—The swap execution facility shall—

16 “(A) establish and enforce rules or terms
17 and conditions defining, or specifications detail-
18 ing—

19 “(i) trading procedures to be used in
20 entering and executing orders traded on or
21 through the facilities of the swap execution
22 facility; and

23 “(ii) procedures for trade processing
24 of security-based swaps on or through the
25 facilities of the swap execution facility; and

1 “(B) monitor trading in security-based
2 swaps to prevent manipulation, price distortion,
3 and disruptions of the delivery or cash settle-
4 ment process through surveillance, compliance,
5 and disciplinary practices and procedures, in-
6 cluding methods for conducting real-time moni-
7 toring of trading and comprehensive and accu-
8 rate trade reconstructions.

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

11 “(A) establish and enforce rules that will
12 allow the facility to obtain any necessary infor-
13 mation to perform any of the functions de-
14 scribed in this subsection;

15 “(B) provide the information to the Com-
16 mission on request; and

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

20 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

21 “(A) IN GENERAL.—To reduce the poten-
22 tial threat of market manipulation or conges-
23 tion, especially during trading in the delivery
24 month, the security-based swap execution facil-
25 ity shall adopt for each of the contracts of the

1 facility, as is necessary and appropriate, posi-
2 tion limitations or position accountability for
3 speculators.

4 “(B) POSITION LIMITS.—For any contract
5 that is subject to a position limitation estab-
6 lished by the Commission pursuant to section
7 4a(a), the security-based swap execution facility
8 shall set its position limitation at a level no
9 higher than the Commission limitation.

10 “(C) POSITION ENFORCEMENT.—For any
11 contract that is subject to a position limitation
12 established by the Commission pursuant to sec-
13 tion 4a(a), a swap execution facility shall reject
14 any proposed security-based swap transaction
15 if, based on information readily available to a
16 swap execution facility, any proposed security-
17 based swap transaction would cause a swap exe-
18 cution facility customer that would be a party
19 to such swap transaction to exceed such posi-
20 tion limitation.

21 “(7) FINANCIAL INTEGRITY OF TRANS-
22 ACTIONS.—The swap execution facility shall estab-
23 lish and enforce rules and procedures for ensuring
24 the financial integrity of security-based swaps en-
25 tered on or through the facilities of the security-

1 based swap execution facility, including the clearance
2 and settlement of the security-based swaps pursuant
3 to section 2(h)(1).

4 “(8) EMERGENCY AUTHORITY.—The swap exe-
5 cution facility shall adopt rules to provide for the ex-
6 ercise of emergency authority, in consultation or co-
7 operation with the Commission, as is necessary and
8 appropriate, including the authority to liquidate or
9 transfer open positions in any security-based swap
10 or to suspend or curtail trading in a security-based
11 swap.

12 “(9) TIMELY PUBLICATION OF TRADING INFOR-
13 MATION.—

14 “(A) IN GENERAL.—The swap execution
15 facility shall make public timely information on
16 price, trading volume, and other trading data
17 on security-based swaps to the extent prescribed
18 by the Commission.

19 “(B) CAPACITY OF SWAP EXECUTION FA-
20 CILITY.—The swap execution facility shall be
21 required to have the capacity to electronically
22 capture trade information with respect to trans-
23 actions executed on the facility.

24 “(10) RECORDKEEPING AND REPORTING.—

1 “(A) IN GENERAL.—A swap execution fa-
2 cility shall—

3 “(i) maintain records of all activities
4 relating to the business of the facility, in-
5 cluding a complete audit trail, in a form
6 and manner acceptable to the Commission
7 for a period of 5 years; and

8 “(ii) report to the Commission, in a
9 form and manner acceptable to the Com-
10 mission, such information as the Commis-
11 sion determines to be necessary or appro-
12 priate for the Commission to perform the
13 duties of the Commission under this title.

14 “(B) REQUIREMENTS.—The Commission
15 shall adopt data collection and reporting re-
16 quirements for swap execution facilities that are
17 comparable to corresponding requirements for
18 clearing agencies and swap data repositories.

19 “(11) ANTITRUST CONSIDERATIONS.—Unless
20 necessary or appropriate to achieve the purposes of
21 this title, the swap execution facility shall avoid—

22 “(A) adopting any rules or taking any ac-
23 tions that result in any unreasonable restraint
24 of trade; or

1 “(B) imposing any material anticompeti-
2 tive burden on trading or clearing.

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

5 “(A) establish and enforce rules to mini-
6 mize conflicts of interest in its decisionmaking
7 process; and

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

10 “(13) FINANCIAL RESOURCES.—

11 “(A) IN GENERAL.—The swap execution
12 facility shall have adequate financial, oper-
13 ational, and managerial resources to discharge
14 each responsibility of the swap execution facil-
15 ity.

16 “(B) DETERMINATION OF RESOURCE ADE-
17 QUACY.—The financial resources of a swap exe-
18 cution facility shall be considered to be ade-
19 quate if the value of the financial resources ex-
20 ceeds the total amount that would enable the
21 swap execution facility to cover the operating
22 costs of the swap execution facility for a 1-year
23 period, as calculated on a rolling basis.

24 “(14) SYSTEM SAFEGUARDS.—The swap execu-
25 tion facility shall—

1 “(A) establish and maintain a program of
2 risk analysis and oversight to identify and mini-
3 mize sources of operational risk, through the
4 development of appropriate controls and proce-
5 dures, and automated systems, that—
6 “(i) are reliable and secure; and
7 “(ii) have adequate scalable capacity;
8 “(B) establish and maintain emergency
9 procedures, backup facilities, and a plan for dis-
10 aster recovery that are designed to allow for—
11 “(i) the timely recovery and resump-
12 tion of operations; and
13 “(ii) the fulfillment of the responsibil-
14 ities and obligation of the swap execution
15 facility; and
16 “(C) periodically conduct tests to verify
17 that the backup resources of the swap execution
18 facility are sufficient to ensure continued—
19 “(i) order processing and trade
20 matching;
21 “(ii) price reporting;
22 “(iii) market surveillance and
23 “(iv) maintenance of a comprehensive
24 and accurate audit trail.

1 “(15) DESIGNATION OF CHIEF COMPLIANCE
2 OFFICER.—

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

6 “(B) DUTIES.—The chief compliance offi-
7 cer shall—

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

10 “(ii) review compliance with the core
11 principles in this subsection;

12 “(iii) in consultation with the board of
13 the facility, a body performing a function
14 similar to that of a board, or the senior of-
15 ficer of the facility, resolve any conflicts of
16 interest that may arise;

17 “(iv) be responsible for establishing
18 and administering the policies and proce-
19 dures required to be established pursuant
20 to this section;

21 “(v) ensure compliance with this title
22 and the rules and regulations issued under
23 this title, including rules prescribed by the
24 Commission pursuant to this section; and

1 “(ii) REQUIREMENTS.—The chief
2 compliance officer shall—

3 “(I) submit each report described
4 in clause (i) with the appropriate fi-
5 nancial report of the swap execution
6 facility that is required to be sub-
7 mitted to the Commission pursuant to
8 this section; and

9 “(II) include in the report a cer-
10 tification that, under penalty of law,
11 the report is accurate and complete.

12 “(e) EXEMPTIONS.—The Commission may exempt,
13 conditionally or unconditionally, a swap execution facility
14 from registration under this section if the Commission
15 finds that the facility is subject to comparable, comprehen-
16 sive supervision and regulation on a consolidated basis by
17 the Commodity Futures Trading Commission.

18 “(f) RULES.—The Commission shall prescribe rules
19 governing the regulation of swap execution facilities under
20 this section.”.

21 (e) SEGREGATION OF ASSETS HELD AS COLLATERAL
22 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-
23 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
24 amended by inserting after section 3C (as added by sub-
25 section (b)) the following:

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

3 “(a) **REGISTRATION REQUIREMENT.**—It shall be un-
4 lawful for any person to accept any money, securities, or
5 property (or to extend any credit in lieu of money, securi-
6 ties, or property) from, for, or on behalf of a security-
7 based swaps customer or to margin, guarantee, or secure
8 a security-based swap cleared by or through a clearing
9 agency (including money, securities, or property accruing
10 to the customer as the result of such a security-based
11 swap), unless the person shall have registered under this
12 title with the Commission as a broker, dealer, or security-
13 based swap dealer, and the registration shall not have ex-
14 pired nor been suspended nor revoked.

15 “(b) **CLEARED SECURITY-BASED SWAPS.**—

16 “(1) **SEGREGATION REQUIRED.**—A broker,
17 dealer, or security-based swap dealer shall treat and
18 deal with all money, securities, and property of any
19 security-based swaps customer received to margin,
20 guarantee, or secure a security-based swap cleared
21 by or through a clearing agency (including money, se-
22 curities, or property accruing to the security-based
23 swaps customer as the result of such a security-
24 based swap) as belonging to the security-based
25 swaps customer.

1 “(2) COMMINGLING PROHIBITED.—Money, se-
2 curities, and property of a security-based swaps cus-
3 tomer described in paragraph (1) shall be separately
4 accounted for and shall not be commingled with the
5 funds of the broker, dealer, or security-based swap
6 dealer or be used to margin, secure, or guarantee
7 any trades or contracts of any security-based swaps
8 customer or person other than the person for whom
9 the same are held.

10 “(c) EXCEPTIONS.—

11 “(1) USE OF FUNDS.—

12 “(A) IN GENERAL.—Notwithstanding sub-
13 section (b), money, securities, and property of a
14 security-based swaps customer of a broker,
15 dealer, or security-based swap dealer described
16 in subsection (b) may, for convenience, be com-
17 mingled and deposited in the same 1 or more
18 accounts with any bank or trust company or
19 with a clearing agency.

20 “(B) WITHDRAWAL.—Notwithstanding
21 subsection (b), such share of the money, securi-
22 ties, and property described in clause (i) as in
23 the normal course of business shall be necessary
24 to margin, guarantee, secure, transfer, adjust,
25 or settle a cleared security-based swap with a

1 clearing agency, or with any member of the
2 clearing agency, may be withdrawn and applied
3 to such purposes, including the payment of
4 commissions, brokerage, interest, taxes, storage,
5 and other charges, lawfully accruing in connec-
6 tion with the cleared security-based swap.

7 “(2) COMMISSION ACTION.—Notwithstanding
8 subsection (b), in accordance with such terms and
9 conditions as the Commission may prescribe by rule,
10 regulation, or order, any money, securities, or prop-
11 erty of the security-based swaps customer of a
12 broker, dealer, or security-based swap dealer de-
13 scribed in subsection (b) may be commingled and de-
14 posited as provided in this section with any other
15 money, securities, or property received by the
16 broker, dealer, or security-based swap dealer and re-
17 quired by the Commission to be separately ac-
18 counted for and treated and dealt with as belonging
19 to the security-based swaps customer of the broker,
20 dealer, or security-based swap dealer.

21 “(d) PERMITTED INVESTMENTS.—Money described
22 in subsection (b) may be invested in obligations of the
23 United States, in general obligations of any State or of
24 any political subdivision of a State, and in obligations fully
25 guaranteed as to principal and interest by the United

1 States, or in any other investment that the Commission
2 may by rule or regulation prescribe, and such investments
3 shall be made in accordance with such rules and regula-
4 tions and subject to such conditions as the Commission
5 may prescribe.

6 “(e) PROHIBITION.—It shall be unlawful for any per-
7 son, including any clearing agency and any depository,
8 that has received any money, securities, or property for
9 deposit in a separate account or accounts as provided in
10 subsection (b) to hold, dispose of, or use any such money,
11 securities, or property as belonging to the depositing
12 broker, dealer, or security-based swap dealer or any person
13 other than the swaps customer of the broker, dealer, or
14 security-based swap dealer.”.

15 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6
16 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
17 is amended by adding at the end the following:

18 “(l) SECURITY-BASED SWAPS.—It shall be unlawful
19 for any person to effect a transaction in a security-based
20 swap with or for a person that is not an eligible contract
21 participant, unless such transaction is effected on a na-
22 tional securities exchange registered pursuant to sub-
23 section (b).”.

24 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
25 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
2 amended by striking paragraphs (1) through (3) and in-
3 serting the following:

4 “(1) any transaction in connection with any se-
5 curity whereby any party to such transaction ac-
6 quires—

7 “(A) any put, call, straddle, or other op-
8 tion or privilege of buying the security from or
9 selling the security to another without being
10 bound to do so;

11 “(B) any security futures product on the
12 security; or

13 “(C) any security-based swap involving the
14 security or the issuer of the security; or

15 “(2) any transaction in connection with any se-
16 curity with relation to which he has, directly or indi-
17 rectly, any interest in any—

18 “(A) such put, call, straddle, option, or
19 privilege;

20 “(B) such security futures product; or

21 “(C) such security-based swap; or

22 “(3) any transaction in any security for the ac-
23 count of any person who he has reason to believe
24 has, and who actually has, directly or indirectly, any
25 interest in any—

1 “(A) such put, call, straddle, option, or
2 privilege;

3 “(B) such security futures product with re-
4 lation to such security; or

5 “(C) any security-based swap involving
6 such security or the issuer of such security.”.

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

12 “(i) It shall be unlawful for any person, directly or
13 indirectly, by the use of any means or instrumentality of
14 interstate commerce or of the mails, or of any facility of
15 any national securities exchange, to effect any transaction
16 in, or to induce or attempt to induce the purchase or sale
17 of, any security-based swap, in connection with which such
18 person engages in any fraudulent, deceptive, or manipula-
19 tive act or practice, makes any fictitious quotation, or en-
20 gages in any transaction, practice, or course of business
21 which operates as a fraud or deceit upon any person. The
22 Commission shall, for the purposes of this paragraph, by
23 rules and regulations define, and prescribe means reason-
24 ably designed to prevent, such transactions, acts, prac-

1 tices, and courses of business as are fraudulent, deceptive,
2 or manipulative, and such quotations as are fictitious.”.

3 (i) POSITION LIMITS AND POSITION ACCOUNT-
4 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
5 Exchange Act of 1934 is amended by inserting after sec-
6 tion 10A (15 U.S.C. 78j–1) the following new section:

7 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
8 **ABILITY FOR SECURITY-BASED SWAPS AND**
9 **LARGE TRADER REPORTING.**

10 “(a) POSITION LIMITS.—As a means reasonably de-
11 signed to prevent fraud and manipulation, the Commission
12 may, by rule or regulation, as necessary or appropriate
13 in the public interest or for the protection of investors,
14 establish limits (including related hedge exemption provi-
15 sions) on the size of positions in any security-based swap
16 that may be held by any person. In establishing such lim-
17 its, the Commission may require any person to aggregate
18 positions in—

19 “(1) any security-based swap and any security
20 or loan or group or narrow-based security index of
21 securities or loans on which such security-based
22 swap is based, which such security-based swap ref-
23 erences, or to which such security-based swap is re-
24 lated as described in section 3(a)(68), and any other
25 instrument relating to such security or loan or group

1 or narrow-based security index of securities or loans;
2 or

3 “(2) any security-based swap and (A) any secu-
4 rity or group or narrow-based security index of secu-
5 rities, the price, yield, value, or volatility of which,
6 or of which any interest therein, is the basis for a
7 material term of such security-based swap as de-
8 scribed in section 3(a)(76) and (B) any security-
9 based swap and any other instrument relating to the
10 same security or group or narrow-based security
11 index of securities.

12 “(b) EXEMPTIONS.—The Commission, by rule, regu-
13 lation, or order, may conditionally or unconditionally ex-
14 empt any person or class of persons, any security-based
15 swap or class of security-based swaps, or any transaction
16 or class of transactions from any requirement it may es-
17 tablish under this section with respect to position limits.

18 “(c) SRO RULES.—

19 “(1) IN GENERAL.—As a means reasonably de-
20 signed to prevent fraud or manipulation, the Com-
21 mission, by rule, regulation, or order, as necessary
22 or appropriate in the public interest, for the protec-
23 tion of investors, or otherwise in furtherance of the
24 purposes of this title, may direct a self-regulatory
25 organization—

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

4 “(i) any member of such self-regu-
5 latory organization; or

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

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

13 “(2) REQUIREMENT TO AGGREGATE POSI-
14 TIONS.—In establishing such limits, the self-regu-
15 latory organization may require such member or per-
16 son to aggregate positions in—

17 “(A) any security-based swap and any se-
18 curity or loan or group or narrow-based secu-
19 rity narrow-based security index of securities or
20 loans on which such security-based swap is
21 based, which such security-based swap ref-
22 erences, or to which such security-based swap is
23 related as described in section 3(a)(68), and
24 any other instrument relating to such security

1 or loan or group or narrow-based security index
2 of securities or loans; or

3 “(B)(i) any security-based swap; and

4 “(ii) any security-based swap and any
5 other instrument relating to the same security
6 or group or narrow-based security index of se-
7 curities.

8 “(d) LARGE TRADER REPORTING.—The Commis-
9 sion, by rule or regulation, may require any person that
10 effects transactions for such person’s own account or the
11 account of others in any securities-based swap or
12 uncleared security-based swap and any security or loan or
13 group or narrow-based security index of securities or loans
14 as set forth in paragraphs (1) and (2) of subsection (a)
15 under this section to report such information as the Com-
16 mission may prescribe regarding any position or positions
17 in any security-based swap or uncleared security-based
18 swap and any security or loan or group or narrow-based
19 security index of securities or loans and any other instru-
20 ment relating to such security or loan or group or narrow-
21 based security index of securities or loans as set forth in
22 paragraphs (1) and (2) of subsection (a) under this sec-
23 tion.”.

24 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-
25 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 78m) is amended by add-
2 ing at the end the following:

3 “(m) PUBLIC AVAILABILITY OF SECURITY-BASED
4 SWAP TRANSACTION DATA.—

5 “(1) IN GENERAL.—

6 “(A) DEFINITION OF REAL-TIME PUBLIC
7 REPORTING.—In this paragraph, the term ‘real-
8 time public reporting’ means to report data re-
9 lating to a security-based swap transaction as
10 soon as technologically practicable after the
11 time at which the security-based swap trans-
12 action has been executed.

13 “(B) PURPOSE.—The purpose of this sec-
14 tion is to authorize the Commission to make se-
15 curity-based swap transaction and pricing data
16 available to the public in such form and at such
17 times as the Commission determines appro-
18 priate to enhance price discovery.

19 “(C) GENERAL RULE.—The Commission is
20 authorized to provide by rule for the public
21 availability of security-based swap transaction
22 and pricing data as follows:

23 “(i) With respect to those security-
24 based swaps that are subject to the man-
25 datory clearing requirement described in

1 section 3B(a)(2) (including those security-
2 based swaps that are exempted from the
3 requirement pursuant to section 3B(a)(4)),
4 the Commission shall require real-time
5 public reporting for such transactions.

6 “(ii) With respect to those security-
7 based swaps that are not subject to the
8 mandatory clearing requirement described
9 in subsection section 3B(a)(2), but are
10 cleared at a registered derivatives clearing
11 organization, the Commission shall require
12 real-time public reporting for such trans-
13 actions.

14 “(iii) With respect to security-based
15 swaps that are not cleared at a registered
16 derivatives clearing organization and which
17 are reported to a security-based swap data
18 repository or the Commission under section
19 3B(a), the Commission shall make avail-
20 able to the public, in a manner that does
21 not disclose the business transactions and
22 market positions of any person, aggregate
23 data on such security-based swap trading
24 volumes and positions.

1 “(D) REGISTERED ENTITIES AND PUBLIC
2 REPORTING.—The Commission may require
3 registered entities to publicly disseminate the
4 security-based swap transaction and pricing
5 data required to be reported under this para-
6 graph.

7 “(E) RULEMAKING REQUIRED.—With re-
8 spect to the rule providing for the public avail-
9 ability of transaction and pricing data for secu-
10 rity-based swaps described in clauses (i) and (ii)
11 of subparagraph (C), the rule promulgated by
12 the Commission shall contain provisions—

13 “(i) to ensure such information does
14 not identify the participants;

15 “(ii) to specify the criteria for deter-
16 mining what constitutes a large notional
17 security-based swap transaction (block
18 trade) for particular markets and con-
19 tracts;

20 “(iii) to specify the appropriate time
21 delay for reporting large notional security-
22 based swap transactions (block trades) to
23 the public; and

1 “(iv) that take into account whether
2 the public disclosure will materially reduce
3 market liquidity.

4 “(F) TIMELINESS OF REPORTING.—Par-
5 ties to a security-based swap (including agents
6 of the parties to a security-based swap) shall be
7 responsible for reporting security-based swap
8 transaction information to the appropriate reg-
9 istered entity in a timely manner as may be
10 prescribed by the Commission.

11 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
12 PORTING OF AGGREGATE SECURITY-BASED SWAP
13 DATA.—

14 “(A) IN GENERAL.—In accordance with
15 subparagraph (B), the Commission shall issue a
16 written report on a semiannual and annual
17 basis to make available to the public informa-
18 tion relating to—

19 “(i) the trading and clearing in the
20 major security-based swap categories; and

21 “(ii) the market participants and de-
22 velopments in new products.

23 “(B) USE; CONSULTATION.—In preparing
24 a report under subparagraph (A), the Commis-
25 sion shall—

1 “(i) use information from security-
2 based swap data repositories and deriva-
3 tives clearing organizations; and

4 “(ii) consult with the Office of the
5 Comptroller of the Currency, the Bank for
6 International Settlements, and such other
7 regulatory bodies as may be necessary.

8 “(n) SWAP DATA REPOSITORIES.—

9 “(1) REGISTRATION REQUIREMENT.—It shall
10 be unlawful for any person, unless registered with
11 the Commission, directly or indirectly, to make use
12 of the mails or any means or instrumentality of
13 interstate commerce to perform the functions of a
14 swap data repository.

15 “(2) INSPECTION AND EXAMINATION.—Each
16 registered swap data repository shall be subject to
17 inspection and examination by any representative of
18 the Commission.

19 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

20 “(A) IN GENERAL.—To be registered, and
21 maintain registration, as a security-based swap
22 data repository, the swap data repository shall
23 comply with—

24 “(i) the core principles described in
25 this subsection; and

1 “(ii) any requirement that the Com-
2 mission may impose by rule or regulation.

3 “(B) REASONABLE DISCRETION OF SWAP
4 DATA REPOSITORY.—Unless otherwise deter-
5 mined by the Commission by rule or regulation,
6 a swap data repository described in subpara-
7 graph (A) shall have reasonable discretion in
8 establishing the manner in which the swap data
9 repository complies with the core principles de-
10 scribed in this subsection.

11 “(4) STANDARD SETTING.—

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

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

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

1 agencies in connection with their clearing of se-
2 curity-based swaps.

3 “(5) DUTIES.—A swap data repository shall—

4 “(A) accept data prescribed by the Com-
5 mission for each security-based swap under sub-
6 section (b);

7 “(B) confirm with both counterparties to
8 the security-based swap the accuracy of the
9 data that was submitted;

10 “(C) maintain the data described in sub-
11 paragraph (A) in such form, in such manner,
12 and for such period as may be required by the
13 Commission;

14 “(D)(i) provide direct electronic access to
15 the Commission (or any designee of the Com-
16 mission, including another registered entity);
17 and

18 “(ii) provide the information described in
19 subparagraph (A) in such form and at such fre-
20 quency as the Commission may require to com-
21 ply with the public reporting requirements con-
22 tained in section 2(a)(13);

23 “(E) at the direction of the Commission,
24 establish automated systems for monitoring,

1 screening, and analyzing security-based swap
2 data;

3 “(F) maintain the privacy of any and all
4 security-based swap transaction information
5 that the swap data repository receives from a
6 security-based swap dealer, counterparty, or
7 any other registered entity; and

8 “(G) on a confidential basis pursuant to
9 section 24, upon request, and after notifying
10 the Commission of the request, make available
11 all data obtained by the swap data repository,
12 including individual counterparty trade and po-
13 sition data, to the Commodity Futures Trading
14 Commission to—

15 “(i) each appropriate prudential regu-
16 lator;

17 “(ii) the Financial Services Oversight
18 Council;

19 “(iii) the Department of Justice; and

20 “(iv) any other person that the Com-
21 mission determines to be appropriate, in-
22 cluding—

23 “(I) foreign financial supervisors
24 (including foreign futures authorities);

25 “(II) foreign central banks; and

1 “(III) foreign ministries.

2 “(H) CONFIDENTIALITY AND INDEM-
3 NIFICATION AGREEMENT.—Before the swap
4 data repository may share information with any
5 entity described in subparagraph (G)—

6 “(i) the swap data repository shall re-
7 ceive a written agreement from each entity
8 stating that the entity shall abide by the
9 confidentiality requirements described in
10 section 24 relating to the information on
11 security-based swap transactions that is
12 provided; and

13 “(ii) each entity shall agree to indem-
14 nify the swap data repository and the
15 Commission for any expenses arising from
16 litigation relating to the information pro-
17 vided under section 24.

18 “(6) DESIGNATION OF CHIEF COMPLIANCE OF-
19 FICER.—

20 “(A) IN GENERAL.—Each security-based
21 swap data repository shall designate an indi-
22 vidual to serve as a chief compliance officer.

23 “(B) DUTIES.—The chief compliance offi-
24 cer shall—

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1 “(II) look-back;

2 “(III) internal or external audit
3 finding;

4 “(IV) self-reported error; or

5 “(V) validated complaint; and

6 “(vii) establish and follow appropriate
7 procedures for the handling, management
8 response, remediation, retesting, and clos-
9 ing of noncompliance issues.

10 “(C) ANNUAL REPORTS.—

11 “(i) IN GENERAL.—In accordance
12 with rules prescribed by the Commission,
13 the chief compliance officer shall annually
14 prepare and sign a report that contains a
15 description of—

16 “(I) the compliance of the swap
17 data repository of the chief compli-
18 ance officer with respect to this title
19 (including regulations); and

20 “(II) each policy and procedure
21 of the swap data repository of the
22 chief compliance officer (including the
23 code of ethics and conflict of interest
24 policies of the swap data repository).

1 “(ii) REQUIREMENTS.—A compliance
2 report under clause (i) shall—

3 “(I) accompany each appropriate
4 financial report of the swap data re-
5 pository that is required to be fur-
6 nished to the Commission pursuant to
7 this section; and

8 “(II) include a certification that,
9 under penalty of law, the compliance
10 report is accurate and complete.

11 “(7) CORE PRINCIPLES APPLICABLE TO SECU-
12 RITY-BASED SWAP DATA REPOSITORIES.—

13 “(A) ANTITRUST CONSIDERATIONS.—Un-
14 less specifically reviewed and approved by the
15 Commission for antitrust purposes, a swap data
16 repository may not—

17 “(i) adopt any rule or take any action
18 that results in any unreasonable restraint
19 of trade; or

20 “(ii) impose any material anticompeti-
21 tive burden on the trading, clearing, or re-
22 porting of transactions.

23 “(B) GOVERNANCE ARRANGEMENTS.—
24 Each security-based swap data repository shall

1 establish governance arrangements that are
2 transparent—

3 “(i) to fulfill public interest require-
4 ments; and

5 “(ii) to support the objectives of the
6 Federal Government, owners, and partici-
7 pants.

8 “(C) CONFLICTS OF INTEREST.—Each se-
9 curity-based swap data repository shall—

10 “(i) establish and enforce rules to
11 minimize conflicts of interest in the deci-
12 sionmaking process of the swap data re-
13 pository; and

14 “(ii) establish a process for resolving
15 conflicts of interest described in clause (i).

16 “(8) REQUIRED REGISTRATION FOR SECURITY-
17 BASED SWAP DATA REPOSITORIES.—Any person that
18 is required to be registered as a swap data reposi-
19 tory under this subsection shall register with the
20 Commission, regardless of whether that person is
21 also licensed under the Commodity Exchange Act as
22 a swap data repository.

23 “(9) RULES.—The Commission shall adopt
24 rules governing persons that are registered under
25 this subsection.”.

1 **SEC. 204. REGISTRATION AND REGULATION OF SECURITY-**
2 **BASED SWAP DEALERS AND MAJOR SECUR-**
3 **RITY-BASED SWAP PARTICIPANTS.**

4 The Securities Exchange Act of 1934 (15 U.S.C. 78a
5 et seq.) is amended by inserting after section 15E (15
6 U.S.C. 78o-7) the following:

7 **“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
8 **BASED SWAP DEALERS AND MAJOR SECUR-**
9 **RITY-BASED SWAP PARTICIPANTS.**

10 “(a) REGISTRATION.—

11 “(1) SECURITY-BASED SWAP DEALERS.—It
12 shall be unlawful for any person to act as a security-
13 based swap dealer unless the person is registered as
14 a security-based swap dealer with the Commission.

15 “(2) MAJOR SECURITY-BASED SWAP PARTICI-
16 PANTS.—It shall be unlawful for any person to act
17 as a major security-based swap participant unless
18 the person is registered as a major security-based
19 swap participant with the Commission.

20 “(b) REQUIREMENTS.—

21 “(1) IN GENERAL.—A person shall register as
22 a security-based swap dealer or major security-based
23 swap participant by filing a registration application
24 with the Commission.

25 “(2) CONTENTS.—

1 “(A) IN GENERAL.—The application shall
2 be made in such form and manner as prescribed
3 by the Commission, and shall contain such in-
4 formation, as the Commission considers nec-
5 essary concerning the business in which the ap-
6 plicant is or will be engaged.

7 “(B) CONTINUAL REPORTING.—A person
8 that is registered as a security-based swap deal-
9 er or major security-based swap participant
10 shall continue to submit to the Commission re-
11 ports that contain such information pertaining
12 to the business of the person as the Commission
13 may require.

14 “(3) EXPIRATION.—Each registration under
15 this section shall expire at such time as the Commis-
16 sion may prescribe by rule or regulation.

17 “(4) RULES.—Except as provided in sub-
18 sections (c), (e), and (f), the Commission may pre-
19 scribe rules applicable to security-based swap dealers
20 and major security-based swap participants, includ-
21 ing rules that limit the activities of security-based
22 swap dealers and major security-based swap partici-
23 pants.

24 “(5) TRANSITION.—Rules under this section
25 shall provide for the registration of security-based

1 swap dealers and major security-based swap partici-
2 pants, not later than 1 year after the date of enact-
3 ment of the Wall Street Transparency and Account-
4 ability Act of 2010.

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

19 “(c) DUAL REGISTRATION.—

20 “(1) SWAP DEALER.—Any person that is re-
21 quired to be registered as a security-based swap
22 dealer under this section shall register with the
23 Commission, regardless of whether the person also is
24 registered with the Commodity Futures Trading
25 Commission as a swap dealer.

1 “(2) MAJOR SWAP PARTICIPANT.—Any person
2 that is required to be registered as a major security-
3 based swap participant under this section shall reg-
4 ister with the Commission, regardless of whether the
5 person also is registered with the Commodity Fu-
6 tures Trading Commission as a major swap partici-
7 pant.

8 “(d) RULEMAKING.—

9 “(1) IN GENERAL.—The Commission shall
10 adopt rules for persons that are registered as secu-
11 rity-based swap dealers or major security-based swap
12 participants under this section.

13 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
14 MENTS.—

15 “(A) IN GENERAL.—The Commission may
16 not prescribe rules imposing prudential require-
17 ments on security-based swap dealers or major
18 security-based swap participants for which there
19 is a prudential regulator.

20 “(B) APPLICABILITY.—Subparagraph (A)
21 does not limit the authority of the Commission
22 to prescribe appropriate business conduct, re-
23 porting, and recordkeeping requirements to pro-
24 tect investors.

25 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

1 “(1) GENERAL REQUIREMENTS.—

2 “(A) BANK SECURITY-BASED SWAP DEAL-
3 ERS AND MAJOR SECURITY-BASED SWAP PAR-
4 TICIPANTS.—Each registered security-based
5 swap dealer and major security-based swap par-
6 ticipant for which there is a prudential regu-
7 lator shall meet such minimum capital require-
8 ments and minimum initial and variation mar-
9 gin requirements, including the use of noncash
10 collateral, as the prudential regulators shall
11 jointly prescribe by rule or regulation that—

12 “(i) help ensure the safety and sound-
13 ness of the security-based swap dealer and
14 the major security-based swap participant;
15 and

16 “(ii) are appropriate for the risk asso-
17 ciated with the uncleared security-based
18 swaps held as a security-based swap dealer
19 or major security-based swap participant
20 and the prudential regulators shall require
21 significantly higher capital for security-
22 based swaps that are uncleared versus
23 similar security-based swaps that are
24 cleared through a derivatives clearing orga-
25 nization.

1 “(B) NONBANK SECURITY-BASED SWAP
2 DEALERS AND MAJOR SECURITY-BASED SWAP
3 PARTICIPANTS.—Each registered security-based
4 swap dealer and major security-based swap par-
5 ticipant for which there is not a prudential reg-
6 ulator shall meet such minimum capital require-
7 ments and minimum initial and variation mar-
8 gin requirements, including the use of noncash
9 collateral, as the Commission shall prescribe by
10 rule or regulation that—

11 “(i) help ensure the safety and sound-
12 ness of the security-based swap dealer and
13 the major security-based swap participant;
14 and

15 “(ii) are appropriate for the risk asso-
16 ciated with the uncleared security-based
17 swaps held as a security-based swap dealer
18 or major security-based swap participant
19 and the regulators shall require signifi-
20 cantly higher capital for security-based
21 swaps that are uncleared versus similar se-
22 curity-based swaps that are cleared
23 through a derivatives clearing organization.

24 “(C) APPLICABILITY WITH RESPECT TO
25 COUNTERPARTIES.—Subparagraphs (A) and

1 (B) shall not apply to initial and variation mar-
2 gin for security-based swaps in which 1 of the
3 counterparties is not—

4 “(i) a security-based swap dealer; or

5 “(ii) a major security-based swap par-
6 ticipant.

7 “(2) COMPARABILITY OF CAPITAL AND MARGIN
8 REQUIREMENTS.—

9 “(A) IN GENERAL.—The prudential regu-
10 lators, the Commission, and the Securities and
11 Exchange Commission shall periodically (but
12 not less frequently than annually) consult on
13 minimum capital requirements and minimum
14 initial and variation margin requirements.

15 “(B) COMPARABILITY.—The entities de-
16 scribed in subparagraph (A) shall, to the max-
17 imum extent practicable, establish and maintain
18 comparable minimum capital requirements and
19 minimum initial and variation margin require-
20 ments for—

21 “(i) security-based swap dealers; and

22 “(ii) major security-based swap par-
23 ticipants.

24 “(3) RULEMAKING.—

1 “(A) BANK SECURITY-BASED SWAP DEAL-
2 ERS AND MAJOR SECURITY-BASED SWAP PAR-
3 TICIPANTS.—The Commission shall adopt rules
4 imposing capital and margin requirements
5 under this subsection for security-based swap
6 dealers and major security-based swap partici-
7 pants for which there is a prudential regulator.

8 “(B) NONBANK SECURITY-BASED SWAP
9 DEALERS AND MAJOR SECURITY-BASED SWAP
10 PARTICIPANTS.—The Commission shall adopt
11 rules imposing capital and margin requirements
12 under this subsection for security-based swap
13 dealers and major security-based swap partici-
14 pants for which there is no prudential regu-
15 lator.

16 “(f) REPORTING AND RECORDKEEPING.—

17 “(1) IN GENERAL.—Each registered security-
18 based swap dealer and major security-based swap
19 participant—

20 “(A) shall make such reports as are re-
21 quired by the Commission by rule or regulation
22 regarding the transactions and positions and fi-
23 nancial condition of the registered security-
24 based swap dealer or major security-based swap
25 participant;

1 “(B)(i) for which there is a prudential reg-
2 ulator, shall keep books and records of all ac-
3 tivities related to the business as a security-
4 based swap dealer or major security-based swap
5 participant in such form and manner and for
6 such period as may be prescribed by the Com-
7 mission by rule or regulation; and

8 “(ii) for which there is no prudential regu-
9 lator, shall keep books and records in such form
10 and manner and for such period as may be pre-
11 scribed by the Commission by rule or regula-
12 tion; and

13 “(C) shall keep books and records de-
14 scribed in subparagraph (B) open to inspection
15 and examination by any representative of the
16 Commission.

17 “(2) RULES.—The Commission shall adopt
18 rules governing reporting and recordkeeping for se-
19 curity-based swap dealers and major security-based
20 swap participants.

21 “(g) DAILY TRADING RECORDS.—

22 “(1) IN GENERAL.—Each registered security-
23 based swap dealer and major security-based swap
24 participant shall maintain daily trading records of
25 the security-based swaps of the registered security-

1 based swap dealer and major security-based swap
2 participant and all related records (including related
3 cash or forward transactions) and recorded commu-
4 nications, including electronic mail, instant mes-
5 sages, and recordings of telephone calls, for such pe-
6 riod as may be required by the Commission by rule
7 or regulation.

8 “(2) INFORMATION REQUIREMENTS.—The daily
9 trading records shall include such information as the
10 Commission shall require by rule or regulation.

11 “(3) CUSTOMER RECORDS.—Each registered se-
12 curity-based swap dealer and major security-based
13 swap participant shall maintain daily trading records
14 for each customer or counterparty in a manner and
15 form that is identifiable with each security-based
16 swap transaction.

17 “(4) AUDIT TRAIL.—Each registered security-
18 based swap dealer and major security-based swap
19 participant shall maintain a complete audit trail for
20 conducting comprehensive and accurate trade recon-
21 structions.

22 “(5) RULES.—The Commission shall adopt
23 rules governing daily trading records for security-
24 based swap dealers and major security-based swap
25 participants.

1 “(h) BUSINESS CONDUCT STANDARDS.—

2 “(1) IN GENERAL.—Each registered security-
3 based swap dealer and major security-based swap
4 participant shall conform with such business conduct
5 standards as may be prescribed by the Commission
6 by rule or regulation that relate to—

7 “(A) fraud, manipulation, and other abu-
8 sive practices involving security-based swaps
9 (including security-based swaps that are offered
10 but not entered into);

11 “(B) diligent supervision of the business of
12 the registered security-based swap dealer and
13 major security-based swap participant;

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

16 “(D) such other matters as the Commis-
17 sion determines to be appropriate.

18 “(2) SPECIAL RULE; FIDUCIARY DUTIES TO
19 CERTAIN ENTITIES.—

20 “(A) GOVERNMENTAL ENTITIES.—A secu-
21 rity-based swap dealer that provides advice re-
22 garding, or offers to enter into, or enters into
23 a security-based swap with a State, State agen-
24 cy, city, county, municipality, or other political
25 subdivision or a Federal agency shall have a fi-

1 duciary duty to the State, State agency, city,
2 county, municipality, or other political subdivi-
3 sion, or the Federal agency as appropriate.

4 “(B) PENSION PLANS; ENDOWMENTS; RE-
5 TIREMENT PLANS.—A security-based swap deal-
6 er that provides advice regarding, or offers to
7 enter into, or enters into a security-based swap
8 with a pension plan, endowment, or retirement
9 plan shall have a fiduciary duty to the pension
10 plan, endowment, or retirement plan, as appro-
11 priate.

12 “(3) BUSINESS CONDUCT REQUIREMENTS.—
13 Business conduct requirements adopted by the Com-
14 mission shall—

15 “(A) establish the standard of care for a
16 security-based swap dealer or major security-
17 based swap participant to verify that any
18 counterparty meets the eligibility standards for
19 an eligible contract participant;

20 “(B) require disclosure by the security-
21 based swap dealer or major security-based swap
22 participant to any counterparty to the trans-
23 action (other than a security-based swap dealer
24 or a major security-based swap participant)
25 of—

1 “(i) information about the material
2 risks and characteristics of the security-
3 based swap;

4 “(ii) the source and amount of any
5 fees or other material remuneration that
6 the security-based swap dealer or major se-
7 curity-based swap participant would di-
8 rectly or indirectly expect to receive in con-
9 nection with the security-based swap;

10 “(iii) any other material incentives or
11 conflicts of interest that the security-based
12 swap dealer or major security-based swap
13 participant may have in connection with
14 the security-based swap; and

15 “(iv)(I) for cleared security-based
16 swaps, upon the request of the
17 counterparty, the daily mark from the ap-
18 propriate derivatives clearing organization;
19 and

20 “(II) for uncleared security-based
21 swaps, upon request of the counterparty,
22 the daily mark of the security-based swap
23 dealer or the major security-based swap
24 participant; and

1 “(C) establish such other standards and
2 requirements as the Commission may determine
3 are appropriate in the public interest, for the
4 protection of investors, or otherwise in further-
5 ance of the purposes of this title.

6 “(4) RULES.—The Commission shall prescribe
7 rules under this subsection governing business con-
8 duct standards for security-based swap dealers and
9 major security-based swap participants.

10 “(i) DOCUMENTATION AND BACK OFFICE STAND-
11 ARDS.—

12 “(1) IN GENERAL.—Each registered security-
13 based swap dealer and major security-based swap
14 participant shall conform with such standards as
15 may be prescribed by the Commission by rule or reg-
16 ulation that relate to timely and accurate confirma-
17 tion, processing, netting, documentation, and valu-
18 ation of all security-based swaps.

19 “(2) RULES.—The Commission shall adopt
20 rules governing documentation and back office
21 standards for security-based swap dealers and major
22 security-based swap participants.

23 “(j) DUTIES.—Each registered security-based swap
24 dealer and major security-based swap participant at all
25 times shall comply with the following requirements:

1 “(1) MONITORING OF TRADING.—The security-
2 based swap dealer or major security-based swap par-
3 ticipant shall monitor its trading in security-based
4 swaps to prevent violations of applicable position
5 limits.

6 “(2) RISK MANAGEMENT PROCEDURES.—The
7 security-based swap dealer or major security-based
8 swap participant shall establish robust and profes-
9 sional risk management systems adequate for man-
10 aging the day-to-day business of the security-based
11 swap dealer or major security-based swap partici-
12 pant.

13 “(3) DISCLOSURE OF GENERAL INFORMA-
14 TION.—The security-based swap dealer or major se-
15 curity-based swap participant shall disclose to the
16 Commission and to the prudential regulator for the
17 security-based swap dealer or major security-based
18 swap participant, as applicable, information con-
19 cerning—

20 “(A) terms and conditions of its security-
21 based swaps;

22 “(B) security-based swap trading oper-
23 ations, mechanisms, and practices;

24 “(C) financial integrity protections relating
25 to security-based swaps; and

1 “(D) other information relevant to its trad-
2 ing in security-based swaps.

3 “(4) ABILITY TO OBTAIN INFORMATION.—The
4 security-based swap dealer or major security-based
5 swap participant shall—

6 “(A) establish and enforce internal systems
7 and procedures to obtain any necessary infor-
8 mation to perform any of the functions de-
9 scribed in this section; and

10 “(B) provide the information to the Com-
11 mission and to the prudential regulator for the
12 security-based swap dealer or major security-
13 based swap participant, as applicable, on re-
14 quest.

15 “(5) CONFLICTS OF INTEREST.—The security-
16 based swap dealer and major security-based swap
17 participant shall implement conflict-of-interest sys-
18 tems and procedures that—

19 “(A) establish structural and institutional
20 safeguards to ensure that the activities of any
21 person within the firm relating to research or
22 analysis of the price or market for any com-
23 modity or security-based swap or acting in a
24 role of providing clearing activities or making
25 determinations as to accepting clearing cus-

1 tomers are separated by appropriate informa-
2 tional partitions within the firm from the re-
3 view, pressure, or oversight of persons whose in-
4 volvement in pricing, trading, or clearing activi-
5 ties might potentially bias their judgment or su-
6 pervision and contravene the core principles of
7 open access and the business conduct standards
8 described in this title; and

9 “(B) address such other issues as the
10 Commission determines to be appropriate.

11 “(6) ANTITRUST CONSIDERATIONS.—Unless
12 specifically reviewed and approved by the Commis-
13 sion for antitrust purposes, the security-based swap
14 dealer or major security-based swap participant shall
15 not—

16 “(A) adopt any process or take any action
17 that results in any unreasonable restraint of
18 trade; or

19 “(B) impose any material anticompetitive
20 burden on trading or clearing.

21 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
22 CER.—

23 “(1) IN GENERAL.—Each security-based swap
24 dealer and major security-based swap participant

1 shall designate an individual to serve as a chief com-
2 pliance officer.

3 “(2) DUTIES.—The chief compliance officer
4 shall—

5 “(A) report directly to the board or to the
6 senior officer of the security-based swap dealer
7 or major security-based swap participant;

8 “(B) review the compliance of the security-
9 based swap dealer or major security-based swap
10 participant with respect to the security-based
11 swap dealer and major security-based swap par-
12 ticipant requirements described in this section;

13 “(C) in consultation with the board of di-
14 rectors, a body performing a function similar to
15 the board, or the senior officer of the organiza-
16 tion, resolve any conflicts of interest that may
17 arise;

18 “(D) be responsible for administering each
19 policy and procedure that is required to be es-
20 tablished pursuant to this section;

21 “(E) ensure compliance with this title (in-
22 cluding regulations) relating to security-based
23 swaps, including each rule prescribed by the
24 Commission under this section;

1 “(F) establish procedures for the remedi-
2 ation of noncompliance issues identified by the
3 chief compliance officer through any—

4 “(i) compliance office review;

5 “(ii) look-back;

6 “(iii) internal or external audit find-
7 ing;

8 “(iv) self-reported error; or

9 “(v) validated complaint; and

10 “(G) establish and follow appropriate pro-
11 cedures for the handling, management response,
12 remediation, retesting, and closing of non-
13 compliance issues.

14 “(3) ANNUAL REPORTS.—

15 “(A) IN GENERAL.—In accordance with
16 rules prescribed by the Commission, the chief
17 compliance officer shall annually prepare and
18 sign a report that contains a description of—

19 “(i) the compliance of the security-
20 based swap dealer or major swap partici-
21 pant with respect to this title (including
22 regulations); and

23 “(ii) each policy and procedure of the
24 security-based swap dealer or major secu-
25 rity-based swap participant of the chief

1 compliance officer (including the code of
2 ethics and conflict of interest policies).

3 “(B) REQUIREMENTS.—A compliance re-
4 port under subparagraph (A) shall—

5 “(i) accompany each appropriate fi-
6 nancial report of the security-based swap
7 dealer or major security-based swap partici-
8 pant that is required to be furnished to
9 the Commission pursuant to this section;
10 and

11 “(ii) include a certification that, under
12 penalty of law, the compliance report is ac-
13 curate and complete.

14 “(I) STATUTORY DISQUALIFICATION.—Except to the
15 extent otherwise specifically provided by rule, regulation,
16 or order of the Commission, it shall be unlawful for a secu-
17 rity-based swap dealer or a major security-based swap par-
18 ticipant to permit any person associated with a security-
19 based swap dealer or a major security-based swap partici-
20 pant who is subject to a statutory disqualification to effect
21 or be involved in effecting security-based swaps on behalf
22 of such security-based swap dealer or major security-based
23 swap participant, if such security-based swap dealer or
24 major security-based swap participant knew, or in the ex-

1 ercise of reasonable care should have known, of such stat-
2 utory disqualification.

3 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
4 CEEDING AUTHORITY.—

5 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

6 “(A) SEC.—Except as provided in sub-
7 paragraph (B), the Commission shall have ex-
8 clusive authority to enforce the amendments
9 made by title II of the Wall Street Trans-
10 parency and Accountability Act of 2010, with
11 respect to any person.

12 “(B) PRUDENTIAL REGULATORS.—The
13 prudential regulator shall have exclusive author-
14 ity to enforce the provisions of section 15F(d)
15 and other prudential requirements of this title,
16 with respect to banks, and branches or agencies
17 of foreign banks that are security-based swap
18 dealers or major security-based swap partici-
19 pants.

20 “(C) REFERRAL.—

21 “(i) VIOLATIONS OF NONPRUDENTIAL
22 REQUIREMENTS.—If the prudential regu-
23 lator for a security-based swap dealer or
24 major security-based swap participant has
25 cause to believe that such security-based

1 swap dealer or major security-based swap
2 participant may have engaged in conduct
3 that constitutes a violation of the non-
4 prudential requirements of section 15F or
5 rules adopted by the Commission there-
6 under, that prudential regulator may rec-
7 ommend in writing to the Commission that
8 the Commission initiate an enforcement
9 proceeding as authorized under this title.
10 The recommendation shall be accompanied
11 by a written explanation of the concerns
12 giving rise to the recommendation.

13 “(ii) VIOLATIONS OF PRUDENTIAL RE-
14 QUIREMENTS.—If the Commission has
15 cause to believe that a securities-based
16 swap dealer or major securities-based swap
17 participant that has a prudential regulator
18 may have engaged in conduct that con-
19 stitute a violation of the prudential re-
20 quirements of section 15F(e) or rules
21 adopted thereunder, the Commission may
22 recommend in writing to the prudential
23 regulator that the prudential regulator ini-
24 tiate an enforcement proceeding as author-
25 ized under this title. The recommendation

1 shall be accompanied by a written expla-
2 nation of the concerns giving rise to the
3 recommendation.

4 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
5 AND HEARING.—The Commission, by order, shall
6 censure, place limitations on the activities, functions,
7 or operations of, or revoke the registration of any se-
8 curity-based swap dealer or major security-based
9 swap participant that has registered with the Com-
10 mission pursuant to subsection (b) if it finds, on the
11 record after notice and opportunity for hearing, that
12 such censure, placing of limitations, or revocation is
13 in the public interest and that such security-based
14 swap dealer or major security-based swap partici-
15 pant, or any person associated with such security-
16 based swap dealer or major security-based swap par-
17 ticipant effecting or involved in effecting trans-
18 actions in security-based swaps on behalf of such se-
19 curity-based swap dealer or major security-based
20 swap participant, whether prior or subsequent to be-
21 coming so associated—

22 “(A) has committed or omitted any act, or
23 is subject to an order or finding, enumerated in
24 subparagraph (A), (D), or (E) of paragraph (4)
25 of section 15(b);

1 “(B) has been convicted of any offense
2 specified in subparagraph (B) of such para-
3 graph (4) within 10 years of the commencement
4 of the proceedings under this subsection;

5 “(C) is enjoined from any action, conduct,
6 or practice specified in subparagraph (C) of
7 such paragraph (4);

8 “(D) is subject to an order or a final order
9 specified in subparagraph (F) or (H), respec-
10 tively, of such paragraph (4); or

11 “(E) has been found by a foreign financial
12 regulatory authority to have committed or omit-
13 ted any act, or violated any foreign statute or
14 regulation, enumerated in subparagraph (G) of
15 such paragraph (4).

16 “(3) ASSOCIATED PERSONS.—With respect to
17 any person who is associated, who is seeking to be-
18 come associated, or, at the time of the alleged mis-
19 conduct, who was associated or was seeking to be-
20 come associated with a security-based swap dealer or
21 major security-based swap participant for the pur-
22 pose of effecting or being involved in effecting secu-
23 rity-based swaps on behalf of such security-based
24 swap dealer or major security-based swap partici-
25 pant, the Commission, by order, shall censure, place

1 limitations on the activities or functions of such per-
2 son, or suspend for a period not exceeding 12
3 months, or bar such person from being associated
4 with a security-based swap dealer or major security-
5 based swap participant, if the Commission finds, on
6 the record after notice and opportunity for a hear-
7 ing, that such censure, placing of limitations, sus-
8 pension, or bar is in the public interest and that
9 such person—

10 “(A) has committed or omitted any act, or
11 is subject to an order or finding, enumerated in
12 subparagraph (A), (D), or (E) of paragraph (4)
13 of section 15(b);

14 “(B) has been convicted of any offense
15 specified in subparagraph (B) of such para-
16 graph (4) within 10 years of the commencement
17 of the proceedings under this subsection;

18 “(C) is enjoined from any action, conduct,
19 or practice specified in subparagraph (C) of
20 such paragraph (4);

21 “(D) is subject to an order or a final order
22 specified in subparagraph (F) or (H), respec-
23 tively, of such paragraph (4); or

24 “(E) has been found by a foreign financial
25 regulatory authority to have committed or omit-

1 ted any act, or violated any foreign statute or
2 regulation, enumerated in subparagraph (G) of
3 such paragraph (4).

4 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
5 ful—

6 “(A) for any person as to whom an order
7 under paragraph (3) is in effect, without the
8 consent of the Commission, willfully to become,
9 or to be, associated with a security-based swap
10 dealer or major security-based swap participant
11 in contravention of such order; or

12 “(B) for any security-based swap dealer or
13 major security-based swap participant to permit
14 such a person, without the consent of the Com-
15 mission, to become or remain a person associ-
16 ated with the security-based swap dealer or
17 major security-based swap participant in con-
18 travention of such order, if such security-based
19 swap dealer or major security-based swap par-
20 ticipant knew, or in the exercise of reasonable
21 care should have known, of such order.”.

22 **SEC. 205. REPORTING AND RECORDKEEPING.**

23 (a) IN GENERAL.—The Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
25 section 13 the following section:

1 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
2 **TAIN SECURITY-BASED SWAPS.**

3 “(a) REQUIRED REPORTING OF SECURITY-BASED
4 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR
5 DERIVATIVES CLEARING ORGANIZATION.—

6 “(1) IN GENERAL.—Each security-based swap
7 that is not accepted for clearing by any clearing
8 agency or derivatives clearing organization shall be
9 reported to—

10 “(A) a swap data repository described in
11 section 10B(n); or

12 “(B) in the case in which there is no swap
13 data repository that would accept the security-
14 based swap, to the Commission pursuant to this
15 section within such time period as the Commis-
16 sion may by rule or regulation prescribe.

17 “(2) TRANSITION RULE FOR PREENACTMENT
18 SECURITY-BASED SWAPS.—

19 “(A) SECURITY-BASED SWAPS ENTERED
20 INTO BEFORE THE DATE OF ENACTMENT OF
21 THE WALL STREET TRANSPARENCY AND AC-
22 COUNTABILITY ACT OF 2010.—Each security-
23 based swap entered into before the date of en-
24 actment of the Wall Street Transparency and
25 Accountability Act of 2010, the terms of which
26 have not expired as of the date of enactment of

1 that Act, shall be reported to a registered secu-
2 rity-based swap data repository or the Commis-
3 sion by a date that is not later than—

4 “(i) 30 days after issuance of the in-
5 terim final rule; or

6 “(ii) such other period as the Com-
7 mission determines to be appropriate.

8 “(B) COMMISSION RULEMAKING.—The
9 Commission shall promulgate an interim final
10 rule within 90 days of the date of enactment of
11 this section providing for the reporting of each
12 security-based swap entered into before the date
13 of enactment as referenced in subparagraph
14 (A).

15 “(C) EFFECTIVE DATE.—The reporting
16 provisions described in this section shall be ef-
17 fective upon the enactment of this section.

18 “(3) REPORTING OBLIGATIONS.—

19 “(A) SECURITY-BASED SWAPS IN WHICH
20 ONLY 1 COUNTERPARTY IS A SECURITY-BASED
21 SWAP DEALER OR MAJOR SECURITY-BASED
22 SWAP PARTICIPANT.—With respect to a secu-
23 rity-based swap in which only 1 counterparty is
24 a security-based swap dealer or major security-
25 based swap participant, the security-based swap

1 dealer or major security-based swap participant
2 shall report the security-based swap as required
3 under paragraphs (1) and (2).

4 “(B) SECURITY-BASED SWAPS IN WHICH 1
5 COUNTERPARTY IS A SECURITY-BASED SWAP
6 DEALER AND THE OTHER A MAJOR SECURITY-
7 BASED SWAP PARTICIPANT.—With respect to a
8 security-based swap in which 1 counterparty is
9 a security-based swap dealer and the other a
10 major security-based swap participant, the secu-
11 rity-based swap dealer shall report the security-
12 based swap as required under paragraphs (1)
13 and (2).

14 “(C) OTHER SECURITY-BASED SWAPS.—
15 With respect to any other security-based swap
16 not described in subparagraph (A) or (B), the
17 counterparties to the security-based swap shall
18 select a counterparty to report the security-
19 based swap as required under paragraphs (1)
20 and (2).

21 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
22 vidual or entity that enters into a security-based swap
23 shall meet each requirement described in subsection (c)
24 if the individual or entity did not—

1 “(1) clear the security-based swap in accord-
2 ance with section 3B(a)(1); or

3 “(2) have the data regarding the security-based
4 swap accepted by a security-based swap data reposi-
5 tory in accordance with rules (including timeframes)
6 adopted by the Commission under this title.

7 “(c) REQUIREMENTS.—An individual or entity de-
8 scribed in subsection (b) shall—

9 “(1) upon written request from the Commis-
10 sion, provide reports regarding the security-based
11 swaps held by the individual or entity to the Com-
12 mission in such form and in such manner as the
13 Commission may request; and

14 “(2) maintain books and records pertaining to
15 the security-based swaps held by the individual or
16 entity in such form, in such manner, and for such
17 period as the Commission may require, which shall
18 be open to inspection by—

19 “(A) any representative of the Commis-
20 sion;

21 “(B) an appropriate prudential regulator;

22 “(C) the Commodity Futures Trading
23 Commission;

24 “(D) the Financial Services Oversight
25 Council; and

1 “(E) the Department of Justice.

2 “(d) IDENTICAL DATA.—In prescribing rules under
3 this section, the Commission shall require individuals and
4 entities described in subsection (b) to submit to the Com-
5 mission a report that contains data that is not less com-
6 prehensive than the data required to be collected by swap
7 data repositories under this title.”.

8 (b) BENEFICIAL OWNERSHIP REPORTING.—Section
9 13 of the Securities Exchange Act of 1934 (15 U.S.C.
10 78m) is amended—

11 (1) in subsection (d)(1), by inserting “or other-
12 wise becomes or is deemed to become a beneficial
13 owner of any of the foregoing upon the purchase or
14 sale of a security-based swap that the Commission
15 may define by rule, and” after “Alaska Native
16 Claims Settlement Act,”; and

17 (2) in subsection (g)(1), by inserting “or other-
18 wise becomes or is deemed to become a beneficial
19 owner of any security of a class described in sub-
20 section (d)(1) upon the purchase or sale of a secu-
21 rity-based swap that the Commission may define by
22 rule” after “subsection (d)(1) of this section”.

23 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
24 AGERS.—Section 13(f)(1) of the Securities Exchange Act
25 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting

1 “or otherwise becomes or is deemed to become a beneficial
2 owner of any security of a class described in subsection
3 (d)(1) upon the purchase or sale of a security-based swap
4 that the Commission may define by rule,” after “sub-
5 section (d)(1) of this section”.

6 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
7 Section 15(b)(4) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)(4)) is amended—

9 (1) in subparagraph (C), by adding “security-
10 based swap dealer, major security-based swap partic-
11 ipant,” after “government securities dealer,”; and

12 (2) in subparagraph (F), by adding “, or secu-
13 rity-based swap dealer, or a major security-based
14 swap participant” after “or dealer”.

15 (e) SECURITY-BASED SWAP BENEFICIAL OWNER-
16 SHIP.—Section 13 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78m) is amended by adding at the end the
18 following:

19 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
20 section and section 16, a person shall be deemed to acquire
21 beneficial ownership of an equity security based on the
22 purchase or sale of a security-based swap, only to the ex-
23 tent that the Commission, by rule, determines after con-
24 sultation with the prudential regulators and the Secretary
25 of the Treasury, that the purchase or sale of the security-

1 based swap, or class of security-based swap, provides inci-
2 dents of ownership comparable to direct ownership of the
3 equity security, and that it is necessary to achieve the pur-
4 poses of this section that the purchase or sale of the secu-
5 rity-based swaps, or class of security-based swap, be
6 deemed the acquisition of beneficial ownership of the eq-
7 uity security.”.

8 **SEC. 206. STATE GAMING AND BUCKET SHOP LAWS.**

9 Section 28(a) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78bb(a)) is amended to read as follows:

11 “(a) **LIMITATION ON JUDGMENTS.**—

12 “(1) **IN GENERAL.**—No person permitted to
13 maintain a suit for damages under the provisions of
14 this title shall recover, through satisfaction of judg-
15 ment in one or more actions, a total amount in ex-
16 cess of the actual damages to that person on account
17 of the act complained of. Except as otherwise spe-
18 cifically provided in this title, nothing in this title
19 shall affect the jurisdiction of the securities commis-
20 sion (or any agency or officer performing like func-
21 tions) of any State over any security or any person
22 insofar as it does not conflict with the provisions of
23 this title or the rules and regulations under this
24 title.

1 “(2) RULE OF CONSTRUCTION.—Except as pro-
2 vided in subsection (f), the rights and remedies pro-
3 vided by this title shall be in addition to any and all
4 other rights and remedies that may exist at law or
5 in equity.

6 “(3) STATE BUCKET SHOP LAWS.—No State
7 law which prohibits or regulates the making or pro-
8 moting of wagering or gaming contracts, or the op-
9 eration of ‘bucket shops’ or other similar or related
10 activities, shall invalidate—

11 “(A) any put, call, straddle, option, privi-
12 lege, or other security subject to this title (ex-
13 cept any security that has a pari-mutuel payout
14 or otherwise is determined by the Commission,
15 acting by rule, regulation, or order, to be appro-
16 priately subject to such laws), or apply to any
17 activity which is incidental or related to the
18 offer, purchase, sale, exercise, settlement, or
19 closeout of any such security;

20 “(B) any security-based swap between eli-
21 gible contract participants; or

22 “(C) any security-based swap effected on a
23 national securities exchange registered pursuant
24 to section 6(b).

1 “(4) OTHER STATE PROVISIONS.—No provision
2 of State law regarding the offer, sale, or distribution
3 of securities shall apply to any transaction in a secu-
4 rity-based swap or a security futures product, except
5 that this paragraph may not be construed as lim-
6 iting any State antifraud law of general applica-
7 bility. A security-based swap may not be regulated
8 as an insurance contract under any provision of
9 State law.”.

10 **SEC. 207. AMENDMENTS TO THE SECURITIES ACT OF 1933;**

11 **TREATMENT OF SECURITY-BASED SWAPS.**

12 (a) DEFINITIONS.—Section 2(a) of the Securities Act
13 of 1933 (15 U.S.C. 77b(a)) is amended—

14 (1) in paragraph (1), by inserting “security-
15 based swap,” after “security future,”;

16 (2) in paragraph (3) by adding at the end the
17 following: “Any offer or sale of a security-based
18 swap by or on behalf of the issuer of the securities
19 upon which such security-based swap is based or is
20 referenced, an affiliate of the issuer, or an under-
21 writer, shall constitute a contract for sale of, sale of,
22 offer for sale, or offer to sell such securities.”; and

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

1 “(17) The terms ‘swap’ and ‘security-based
2 swap’ have the same meanings as in section 1a of
3 the Commodity Exchange.

4 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
5 rity-based swap shall be deemed to mean the execu-
6 tion, termination (prior to its scheduled maturity
7 date), assignment, exchange, or similar transfer or
8 conveyance of, or extinguishing of rights or obliga-
9 tions under, a security-based swap, as the context
10 may require.”.

11 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
12 of the Securities Act of 1933 (15 U.S.C. 77e) is amended
13 by adding at the end the following:

14 “(15) Any security-based swap that is not oth-
15 erwise a security, and that satisfies such conditions
16 as are established by rule or regulation by the Com-
17 mission, consistent with the provisions of the Wall
18 Street Transparency and Accountability Act of
19 2010.”.

20 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
21 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
22 is amended by adding at the end the following:

23 “(d) Notwithstanding the provisions of section 3 or
24 4, unless a registration statement meeting the require-
25 ments of section 10(a) is in effect as to a security-based

1 swap, it shall be unlawful for any person, directly or indi-
2 rectly, to make use of any means or instruments of trans-
3 portation or communication in interstate commerce or of
4 the mails to offer to sell, offer to buy or purchase or sell
5 a security-based swap to any person who is not an eligible
6 contract participant as defined in section 1a(12) of the
7 Commodity Exchange Act (7 U.S.C. 1a(12)).”.

8 **SEC. 208. DEFINITIONS UNDER THE INVESTMENT COMPANY**
9 **ACT OF 1940.**

10 Section 2(a) of the Investment Company Act of 1940
11 (15 U.S.C. 80a–1) is amended—

12 “(54) SWAP RELATED TERMS.—The terms
13 ‘broad-based security index’, ‘commodity pool’, ‘com-
14 modity pool operator’, ‘commodity trading advisor’,
15 ‘major swap participant’, ‘swap’, ‘swap dealer’, and
16 ‘swap execution facility’ have the same meanings as
17 in section 1a of the Commodity Exchange Act (7
18 U.S.C. 1a).”.

19 **SEC. 209. DEFINITIONS UNDER THE INVESTMENT ADVI-**
20 **SORS ACT OF 1940.**

21 Section 202(a) of the Investment Advisers Act of
22 1940 (15 U.S.C. 80b–1) is amended—

23 “(29) SWAP RELATED TERMS.—The terms
24 ‘broad-based security index’, ‘commodity pool’, ‘com-
25 modity pool operator’, ‘commodity trading advisor’,

1 ‘major swap participant’, ‘swap’, ‘swap dealer’, and
2 ‘swap execution facility’ have the same meanings as
3 in section 1a of the Commodity Exchange Act (7
4 U.S.C. 1a).”.

5 **SEC. 210. OTHER AUTHORITY.**

6 Unless otherwise provided by its terms, this title does
7 not divest any appropriate Federal banking agency, the
8 Securities and Exchange Commission, the Commodity Fu-
9 tures Trading Commission, or any other Federal or State
10 agency, of any authority derived from any other provision
11 of applicable law.

12 **SEC. 211. JURISDICTION.**

13 (a) IN GENERAL.—Section 36 of the Securities Ex-
14 change Act of 1934 (15 U.S.C. 78mm) is amended by add-
15 ing at the end the following new subsection:

16 “(c) DERIVATIVES.—The Commission shall not grant
17 exemptions from the security-based swap provisions of the
18 Wall Street Transparency and Accountability Act of 2010
19 or the amendments made by that Act, except as expressly
20 authorized under the provisions of that Act.”.

21 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-
22 curities Exchange Act of 1934 is amended by adding at
23 the end the following:

24 “(c) RULE OF CONSTRUCTION.—No provision of this
25 title that was added by the Wall Street Transparency and

1 Accountability Act of 2010, or any rule or regulation
2 thereunder, shall apply to any person insofar as such per-
3 son transacts a business in security-based swaps without
4 the jurisdiction of the United States, unless such person
5 transacts such business in contravention of such rules and
6 regulations as the Commission may prescribe as necessary
7 or appropriate to prevent the evasion of any provision of
8 this title that was added by the Wall Street Transparency
9 and Accountability Act of 2010. This subsection shall not
10 be construed to limit the jurisdiction of the Commission
11 under any provision of this title, as in effect prior to the
12 date of enactment of the Wall Street Transparency and
13 Accountability Act of 2010.”.

14 **SEC. 212. EFFECTIVE DATE.**

15 (a) IN GENERAL.—Unless otherwise specifically pro-
16 vided in this title, the provisions of this title shall become
17 effective on the later of 270 days after the date of enact-
18 ment of this Act or, to the extent that a provision of this
19 title requires rulemaking, not later than 60 days after
20 publication of a final rule or regulation implementing such
21 provision of this title.

22 (b) RULE OF CONSTRUCTION.—Subsection (a) does
23 not preclude the Securities and Exchange Commission
24 from any rulemaking required to implement the provisions
25 of this title.