

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. Rulemaking on conflict of interest.
- Sec. 117. Public reporting of swap transaction data.
- Sec. 118. Swap data repositories.
- Sec. 119. Reporting and recordkeeping.
- Sec. 120. Large swap trader reporting.
- Sec. 121. Registration and regulation of swap dealers and major swap participants.
- Sec. 122. Conflicts of interest.
- Sec. 123. Swap execution facilities.
- Sec. 124. Derivatives transaction execution facilities and exempt boards of trade.
- Sec. 125. Designated contract markets.
- Sec. 126. Margin.
- Sec. 127. Position limits.
- Sec. 128. Foreign boards of trade.
- Sec. 129. Legal certainty for swaps.
- Sec. 130. Multilateral clearing organizations.
- Sec. 131. Enforcement.
- Sec. 132. Retail commodity transactions.
- Sec. 133. Other authority.
- Sec. 134. Restitution remedies.
- Sec. 135. Enhanced compliance by registered entities.
- Sec. 136. Insider trading.
- Sec. 137. Antidisruptive practices authority.
- Sec. 138. Commodity whistleblower incentives and protection.
- Sec. 139. Conforming amendments.
- Sec. 140. Study on oversight of carbon markets.
- Sec. 141. Energy and environmental markets advisory committee.
- Sec. 142. 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 swap agreements.
- 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. Rulemaking on conflict of interest.
- Sec. 206. Reporting and recordkeeping.
- Sec. 207. State gaming and bucket shop laws.

Sec. 208. Amendments to the Securities Act of 1933; treatment of security-based swaps.

Sec. 209. Definitions under the Investment Company Act of 1940.

Sec. 210. Definitions under the Investment Advisors Act of 1940.

Sec. 211. Other authority.

Sec. 212. Jurisdiction.

Sec. 213. 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,

1 swap dealers, major swap participants, swap
2 data repositories, persons associated with a
3 swap dealer or major swap participant, eligible
4 contract participants, or swap execution facili-
5 ties pursuant to this title (including an amend-
6 ment made by this title), the Commodity Fu-
7 tures Trading Commission shall consult with
8 the Securities and Exchange Commission and
9 the prudential regulators.

10 (B) APPLICABILITY.—The requirements of
11 subparagraph (A) shall not apply to an order
12 issued—

13 (i) in connection with or arising from
14 a violation or potential violation of any
15 provision of the Commodity Exchange Act
16 (7 U.S.C. 1 et seq.); or

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

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

1 (D) EFFECT.—Nothing in this paragraph
2 authorizes any consultation or procedure for
3 consultation that is not consistent with the re-
4 quirements of subchapter II of chapter 5, and
5 chapter 7, of title 5, United States Code (com-
6 monly known as the “Administrative Procedure
7 Act”).

8 (2) SECURITIES AND EXCHANGE COMMIS-
9 SION.—

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

1 (B) APPLICABILITY.—The requirements of
2 subparagraph (A) shall not apply to an order
3 issued—

4 (i) in connection with or arising from
5 a violation or potential violation of any
6 provision of the securities laws; or

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

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

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

22 (3) RULES; ORDERS.—In developing and pro-
23 mulgating rules or orders pursuant to this sub-
24 section—

1 (A) the Commodity Futures Trading Com-
2 mission shall consider the views of—

3 (i) the Securities and Exchange Com-
4 mission; and

5 (ii) the prudential regulators; and

6 (B) the Securities and Exchange Commis-
7 sion shall consider the views of—

8 (i) the Commodity Futures Trading
9 Commission; and

10 (ii) the prudential regulators.

11 (4) TREATMENT OF SIMILAR PRODUCTS AND
12 ENTITIES.—

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

20 (B) EFFECT.—Nothing in this subtitle re-
21 quires the Commodity Futures Trading Com-
22 mission or the Securities and Exchange Com-
23 mission to adopt joint rules or orders that treat
24 functionally or economically similar products or

1 entities described in paragraphs (1) and (2) in
2 an identical manner.

3 (b) LIMITATION.—

4 (1) COMMODITY FUTURES TRADING COMMIS-
5 SION.—Nothing in this title, unless specifically pro-
6 vided, confers jurisdiction on the Commodity Fu-
7 tures Trading Commission to issue a rule, regula-
8 tion, or order providing for oversight or regulation
9 of—

10 (A) security-based swaps; or

11 (B) with regard to its activities or func-
12 tions concerning security-based swaps—

13 (i) security-based swap dealers;

14 (ii) major security-based swap partici-
15 pants;

16 (iii) security-based swap data reposi-
17 tories;

18 (iv) persons associated with a secu-
19 rity-based swap dealer or major security-
20 based swap participant;

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

23 (vi) swap execution facilities with re-
24 spect to security-based swaps.

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

6 (A) swaps; or

7 (B) with regard to its activities or func-
8 tions concerning swaps—

9 (i) swap dealers;

10 (ii) major swap participants;

11 (iii) swap data repositories;

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

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

16 (vi) swap execution facilities with re-
17 spect to swaps.

18 (3) PROHIBITION ON CERTAIN FUTURES ASSO-
19 CIATIONS AND NATIONAL SECURITIES ASSO-
20 CIATIONS.—

21 (A) FUTURES ASSOCIATIONS.—Notwith-
22 standing any other provision of law (including
23 regulations), unless otherwise authorized by this
24 title, no futures association registered under
25 section 17 of the Commodity Exchange Act (7

1 U.S.C. 21) may issue a rule, regulation, or
2 order for the oversight or regulation of, or oth-
3 erwise assert jurisdiction over, for any purpose,
4 any security-based swap.

5 (B) NATIONAL SECURITIES ASSOCIA-
6 TIONS.—Notwithstanding any other provision of
7 law (including regulations), unless otherwise au-
8 thorized by this title, no national securities as-
9 sociation registered under section 15A of the
10 Securities Exchange Act of 1934 (15 U.S.C.
11 78o–3) may issue a rule, regulation, or order
12 for the oversight or regulation of, or otherwise
13 assert jurisdiction over, for any purpose, any
14 swap.

15 (c) OBJECTION TO COMMISSION REGULATION.—

16 (1) FILING OF PETITION FOR REVIEW.—

17 (A) IN GENERAL.—If either Commission
18 referred to in this section determines that a
19 final rule, regulation, or order of the other
20 Commission conflicts with subsection (a)(4) or
21 (b), then the complaining Commission may ob-
22 tain review of the final rule, regulation, or order
23 in the United States Court of Appeals for the
24 District of Columbia Circuit by filing in the
25 court, not later than 60 days after the date of

1 publication of the final rule, regulation, or
2 order, a written petition requesting that the
3 rule, regulation, or order be set aside.

4 (B) EXPEDITED PROCEEDING.—A pro-
5 ceeding described in subparagraph (A) shall be
6 expedited by the United States Court of Ap-
7 peals for the District of Columbia Circuit.

8 (2) TRANSMITTAL OF PETITION AND
9 RECORD.—

10 (A) IN GENERAL.—A copy of a petition de-
11 scribed in paragraph (1) shall be transmitted
12 not later than 1 business day after the date of
13 filing by the complaining Commission to the
14 Secretary of the responding Commission.

15 (B) DUTY OF RESPONDING COMMISSION.—
16 On receipt of the copy of a petition described
17 in paragraph (1), the responding Commission
18 shall file with the United States Court of Ap-
19 peals for the District of Columbia Circuit—

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

23 (ii) any other materials prescribed by
24 the United States Court of Appeals for the
25 District of Columbia Circuit.

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

4 (A) give deference to the views of neither
5 Commission; and

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

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

19 (d) ADOPTION OF RULES ON UNCLEARED SWAPS.—
20 Notwithstanding subsections (b) and (c), the Commodity
21 Futures Trading Commission and the Securities and Ex-
22 change Commission shall, after consulting with each other
23 Commission, adopt rules—

24 (1) to require the maintenance of records of all
25 activities relating to transactions in swaps and secu-

1 rity-based swaps under the respective jurisdictions of
2 the Commodity Futures Trading Commission and
3 the Securities and Exchange Commission that are
4 uncleared;

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

10 (3) to make available to the Commodity Fu-
11 tures Trading Commission information relating to
12 security-based swaps transactions that are
13 uncleared.

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

23 (f) EXPEDITED RULEMAKING PROCESS.—The Com-
24 modity Futures Trading Commission or the Securities and
25 Exchange Commission, or both, may use emergency and

1 expedited procedures (including any administrative or
2 other procedure as appropriate) to carry out this title and
3 the amendments made by this title if, in either of the Com-
4 missions' discretion, it considers it necessary to do so.

5 **SEC. 103. RECOMMENDATIONS FOR CHANGES TO PORT-**
6 **FOLIO MARGINING LAWS.**

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

16 **SEC. 104. ABUSIVE SWAPS.**

17 The Commodity Futures Trading Commission or the
18 Securities and Exchange Commission, or both, individually
19 may, by rule or order—

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

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

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

4 (2) issue a report with respect to any types of
5 swaps or security-based swaps that the Commodity
6 Futures Trading Commission or the Securities and
7 Exchange Commission determines to be detrimental
8 to—

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

10 (B) participants in a financial market.

11 **SEC. 105. AUTHORITY TO PROHIBIT PARTICIPATION IN**
12 **SWAP ACTIVITIES.**

13 Except as provided in section 4 of the Commodity Ex-
14 change Act (7 U.S.C. 6) (as amended by section 128), if
15 the Commodity Futures Trading Commission or the Secu-
16 rities and Exchange Commission determines that the regu-
17 lation of swaps or security-based swaps markets in a for-
18 eign country undermines the stability of the United States
19 financial system, either Commission, in consultation with
20 the Secretary of the Treasury, may prohibit an entity
21 domiciled in the foreign country from participating in the
22 United States in any swap or security-based swap activi-
23 ties.

1 **SEC. 106. PROHIBITION AGAINST FEDERAL GOVERNMENT**
2 **BAILOUTS OF SWAPS ENTITIES.**

3 (a) PROHIBITION ON FEDERAL ASSISTANCE.—Not-
4 withstanding any other provision of law (including regula-
5 tions), no Federal assistance may be provided to any
6 swaps entity with respect to any swap, security-based
7 swap, or other activity of the swaps entity.

8 (b) DEFINITIONS.—In this section:

9 (1) FEDERAL ASSISTANCE.—The term “Federal
10 assistance” means the use of any funds, including
11 advances from any Federal Reserve credit facility,
12 discount window, or pursuant to the third undesign-
13 nated paragraph of section 13 of the Federal Re-
14 serve Act (12 U.S.C. 343) (relating to emergency
15 lending authority), or Federal Deposit Insurance
16 Corporation insurance or guarantees for the purpose
17 of—

18 (A) making any loan to, or purchasing any
19 stock, equity interest, or debt obligation of, any
20 swaps entity;

21 (B) purchasing the assets of any swaps en-
22 tity;

23 (C) guaranteeing any loan or debt issuance
24 of any swaps entity; or

1 (D) entering into any assistance arrange-
2 ment (including tax breaks), loss sharing, or
3 profit sharing with any swaps entity.

4 (2) SWAPS ENTITY.—The term “swaps entity”
5 means any swap dealer, security-based swap dealer,
6 major swap participant, major security-based swap
7 participant, swap execution facility, designated con-
8 tract market, national securities exchange, central
9 counterparty, clearing house, clearing agency, or de-
10 rivatives clearing organization that is registered
11 under—

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

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

16 (C) any other Federal or State law (includ-
17 ing regulations).

18 **Subtitle B—Regulation of Swap** 19 **Markets**

20 **SEC. 111. DEFINITIONS.**

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

23 (1) by redesignating paragraphs (2), (3) and
24 (4), (5) through (17), (18) through (23), (24)
25 through (28), (29), (30), (31) through (33), and

1 (34) as paragraphs (6), (9) and (10), (12) through
2 (24), (27) through (32), (35) through (39), (41),
3 (42), (45) through (47), and (52), respectively;

4 (2) by inserting after paragraph (1) the fol-
5 lowing:

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

10 “(3) ASSOCIATED PERSON OF A SECURITY-
11 BASED SWAP DEALER OR MAJOR SECURITY-BASED
12 SWAP PARTICIPANT.—The term ‘associated person of
13 a security-based swap dealer or major security-based
14 swap participant’ has the meaning given the term in
15 section 3(a) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78c(a)).

17 “(4) ASSOCIATED PERSON OF A SWAP DEALER
18 OR MAJOR SWAP PARTICIPANT.—

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

22 “(i) any partner, officer, director, or
23 branch manager of a swap dealer or major
24 swap participant (including any individual
25 who holds a similar status or performs a

1 similar function with respect to any part-
2 ner, officer, director, or branch manager of
3 a swap dealer or major swap participant);

4 “(ii) any person that directly or indi-
5 rectly controls, is controlled by, or is under
6 common control with, a swap dealer or
7 major swap participant; and

8 “(iii) any employee of a swap dealer
9 or major swap participant.

10 “(B) EXCLUSION.—Other than for pur-
11 poses of section 4s(b)(6), the term ‘associated
12 person of a swap dealer or major swap partici-
13 pant’ does not include any person associated
14 with a swap dealer or major swap participant
15 the functions of which are solely clerical or min-
16 isterial.

17 “(5) BOARD.—The term ‘Board’ means the
18 Board of Governors of the Federal Reserve Sys-
19 tem.”;

20 (3) by inserting after paragraph (6) (as redesign-
21 nated by paragraph (1)) the following:

22 “(7) BROAD-BASED SECURITY INDEX.—The
23 term ‘broad-based security index’ means an index
24 that—

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

3 “(B) the Commission and the Securities
4 and Exchange Commission have jointly deter-
5 mined should not be treated as a narrow-based
6 security index; or

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

9 “(8) CLEARED SWAP.—The term ‘cleared swap’
10 means any swap that is, directly or indirectly, sub-
11 mitted to and cleared by a derivatives clearing orga-
12 nization registered with the Commission.”;

13 (4) in paragraph (10) (as redesignated by para-
14 graph (1)), by striking “except onions” and all that
15 follows through the period at the end and inserting
16 the following: “except onions (as provided in section
17 13-1) and motion picture box office receipts (or any
18 index, measure, value, or data related to such re-
19 ceipts), and all services, rights, and interests (except
20 motion picture box office receipts, or any index,
21 measure, value or data related to such receipts) in
22 which contracts for future delivery are presently or
23 in the future dealt in.”;

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

1 “(11) COMMODITY POOL.—

2 “(A) IN GENERAL.—The term ‘commodity
3 pool’ means any investment trust, syndicate, or
4 similar form of enterprise operated for the pur-
5 pose of trading in commodity interests, includ-
6 ing any—

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

9 “(ii) agreement, contract, or trans-
10 action described in section 2(c)(2)(C)(i) or
11 section 2(e)(2)(D)(i);

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

14 “(iv) leverage transaction authorized
15 under section 19.

16 “(B) FURTHER DEFINITION.—The Com-
17 mission, by rule or regulation, may include
18 within, or exclude from, the term ‘commodity
19 pool’ any investment trust, syndicate, or similar
20 form of enterprise if the Commission deter-
21 mines that the rule or regulation will effectuate
22 the purposes of this Act.”;

23 (6) by striking paragraph (12) (as redesignated
24 by paragraph (1)) and inserting the following:

25 “(12) COMMODITY POOL OPERATOR.—

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

3 “(i) engaged in a business that is of
4 the nature of a commodity pool, invest-
5 ment trust, syndicate, or similar form of
6 enterprise, and who, in connection there-
7 with, solicits, accepts, or receives from oth-
8 ers, funds, securities, or property, either
9 directly or through capital contributions,
10 the sale of stock or other forms of securi-
11 ties, or otherwise, for the purpose of trad-
12 ing in commodity interest, including any—

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

15 “(II) agreement, contract, or
16 transaction described in section
17 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

18 “(III) commodity option author-
19 ized under section 4c; or

20 “(IV) leverage transaction au-
21 thorized under section 19; or

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

24 “(B) FURTHER DEFINITION.—The Com-
25 mission, by rule or regulation, may include

1 within, or exclude from, the term ‘commodity
2 pool operator’ any person engaged in a business
3 that is of the nature of a commodity pool, in-
4 vestment trust, syndicate, or similar form of en-
5 terprise if the Commission determines that the
6 rule or regulation will effectuate the purposes of
7 this Act.”;

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

10 (A) in clause (i)—

11 (i) in subclause (I), by striking “made
12 or to be made on or subject to the rules of
13 a contract market or derivatives trans-
14 action execution facility” and inserting “,
15 security futures product, or swap”;

16 (ii) by redesignating subclauses (II)
17 and (III) as subclauses (III) and (IV);

18 (iii) by inserting after subclause (I)
19 the following:

20 “(II) any agreement, contract, or
21 transaction described in section
22 2(c)(2)(C)(i) or section 2(c)(2)(D)(i)”;
23 and

24 (iv) in subclause (IV) (as so redesign-
25 nated), by striking “or” ;

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

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

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

6 “(iv) the Commission, by rule or regu-
7 lation, may include if the Commission de-
8 termines that the rule or regulation will ef-
9 fectuate the purposes of this Act.”;

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

14 (9) in paragraph (19) (as redesignated by para-
15 graph (1))—

16 (A) in subparagraph (A)—

17 (i) in the matter following clause
18 (vii)(III)—

19 (I) by striking “section 1a
20 (11)(A)” and inserting “paragraph
21 (18)(A)”;

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

24 (ii) in clause (xi), in the matter pre-
25 ceding subclause (I), by striking “total as-

1 sets in an amount” and inserting
2 “amounts invested on a discretionary
3 basis, the aggregate of which is”;

4 (10) by striking paragraph (23) (as redesignig-
5 nated by paragraph (1)) and inserting the following:

6 “(23) FLOOR BROKER.—

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

9 “(i) who, in or surrounding any pit,
10 ring, post, or other place provided by a
11 contract market for the meeting of persons
12 similarly engaged, shall purchase or sell for
13 any other person—

14 “(I) any commodity for future
15 delivery, security futures product, or
16 swap; or

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

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

21 “(B) FURTHER DEFINITION.—The Com-
22 mission, by rule or regulation, may include
23 within, or exclude from, the term ‘floor broker’
24 any person in or surrounding any pit, ring,
25 post, or other place provided by a contract mar-

1 ket for the meeting of persons similarly engaged
2 who trades for any other person if the Commis-
3 sion determines that the rule or regulation will
4 effectuate the purposes of this Act.”;

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

7 “(24) FLOOR TRADER.—

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

10 “(i) who, in or surrounding any pit,
11 ring, post, or other place provided by a
12 contract market for the meeting of persons
13 similarly engaged, purchases, or sells solely
14 for such person’s own account—

15 “(I) any commodity for future
16 delivery, security futures product, or
17 swap; or

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

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

22 “(B) FURTHER DEFINITION.—The Com-
23 mission, by rule or regulation, may include
24 within, or exclude from, the term ‘floor trader’
25 any person in or surrounding any pit, ring,

1 post, or other place provided by a contract mar-
2 ket for the meeting of persons similarly engaged
3 who trades solely for such person's own account
4 if the Commission determines that the rule or
5 regulation will effectuate the purposes of this
6 Act.”;

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

9 “(25) FOREIGN EXCHANGE FORWARD.—The
10 term ‘foreign exchange forward’ means a transaction
11 that—

12 “(A) solely involves the exchange of 2 dif-
13 ferent currencies on a specific future date at a
14 fixed rate agreed upon on the inception of the
15 contract covering the exchange; and

16 “(B) is physically settled.

17 “(26) FOREIGN EXCHANGE SWAP.—The term
18 ‘foreign exchange swap’ means a transaction that
19 solely involves—

20 “(A) an exchange of 2 different currencies
21 on a specific date at a fixed rate that is agreed
22 upon on the inception of the contract covering
23 the exchange; and

24 “(B) a reverse exchange of the 2 cur-
25 rencies described in subparagraph (A) at a later

1 date and at a fixed rate that is agreed upon on
2 the inception of the contract covering the ex-
3 change.”;

4 (13) by striking paragraph (29) (as redesignig-
5 nated by paragraph (1)) and inserting the following:

6 “(29) FUTURES COMMISSION MERCHANT.—

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

10 “(i) that—

11 “(I) is engaged in soliciting or in
12 accepting orders for—

13 “(aa) the purchase or sale of
14 a commodity for future delivery;

15 “(bb) a security futures
16 product;

17 “(cc) a swap;

18 “(dd) any agreement, con-
19 tract, or transaction described in
20 section 2(c)(2)(C)(i) or section
21 2(c)(2)(D)(i);

22 “(ee) any commodity option
23 authorized under section 4c; or

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

4 “(II) is acting as a counterparty
5 in any agreement, contract, or trans-
6 action described in section
7 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
8 and

9 “(III) in or in connection with
10 the activities described in subclause
11 (I) or (II), accepts any money, securi-
12 ties, or property (or extends credit in
13 lieu thereof) to margin, guarantee, or
14 secure any trades or contracts that re-
15 sult or may result therefrom; or

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

18 “(B) FURTHER DEFINITION.—The Com-
19 mission, by rule or regulation, may include
20 within, or exclude from, the term ‘futures com-
21 mission merchant’ any person who engages in
22 soliciting or accepting orders for, or acting as
23 a counterparty in, any agreement, contract, or
24 transaction subject to this Act, and who accepts
25 any money, securities, or property (or extends

1 credit in lieu thereof) to margin, guarantee, or
2 secure any trades or contracts that result or
3 may result therefrom, if the Commission deter-
4 mines that the rule or regulation will effectuate
5 the purposes of this Act.”;

6 (14) in paragraph (31) (as redesignated by
7 paragraph (1)), in subparagraph (B), by striking
8 “state” and inserting “State”;

9 (15) by striking paragraph (32) (as redesi-
10 gnated by paragraph (1)) and inserting the following:

11 “(32) INTRODUCING BROKER.—

12 “(A) IN GENERAL.—The term ‘introducing
13 broker’ means any person (except an individual
14 who elects to be and is registered as an associ-
15 ated person of a futures commission mer-
16 chant)—

17 “(i) who—

18 “(I) is engaged in soliciting or in
19 accepting orders for—

20 “(aa) the purchase or sale of
21 any commodity for future deliv-
22 ery, security futures product, or
23 swap;

24 “(bb) any agreement, con-
25 tract, or transaction described in

1 section 2(c)(2)(C)(i) or section
2 2(c)(2)(D)(i);

3 “(cc) any commodity option
4 authorized under section 4c; or

5 “(dd) any leverage trans-
6 action authorized under section
7 19; and

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

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

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

1 mission determines that the rule or regulation
2 will effectuate the purposes of this Act.”;

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

5 “(33) MAJOR SECURITY-BASED SWAP PARTICI-
6 PANT.—The term ‘major security-based swap partici-
7 ipant’ has the meaning given the term in section
8 3(a) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78c(a)).

10 “(34) MAJOR SWAP PARTICIPANT.—

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

14 “(i) maintains a substantial position
15 in swaps for any of the major swap cat-
16 egories as determined by the Commission,
17 excluding—

18 “(I) positions held for hedging or
19 mitigating commercial risk; and

20 “(II) positions maintained by any
21 employee benefit plan (or any contract
22 held by such a plan) as defined in
23 paragraphs (2)(A) and (32) of section
24 3 of the Employee Retirement Income
25 Security Act of 1974 (29 U.S.C.

1 1002) for the primary purpose of
2 hedging or mitigating any risk directly
3 associated with the operation of the
4 plan; or

5 “(ii) whose outstanding swaps create
6 substantial counterparty exposure that
7 could have serious adverse effects on the
8 financial stability of the United States
9 banking system or financial markets; or

10 “(iii)(I) is a financial entity, other
11 than an entity predominantly engaged in
12 providing customer financing for the pur-
13 chase of an affiliate’s merchandise or man-
14 ufactured goods, that is highly leveraged
15 relative to the amount of capital it holds;
16 and

17 “(II) maintains a substantial position
18 in outstanding swaps in any major swap
19 category as determined by the Commission.

20 “(B) DEFINITION OF SUBSTANTIAL POSI-
21 TION.—For purposes of subparagraph (A), the
22 Commission shall define by rule or regulation
23 the term ‘substantial position’ at the threshold
24 that the Commission determines to be prudent
25 for the effective monitoring, management, and

1 oversight of entities that are systemically im-
2 portant or can significantly impact the financial
3 system of the United States.

4 “(C) SCOPE OF DESIGNATION.—For pur-
5 poses of subparagraph (A), a person may be
6 designated as a major swap participant for 1 or
7 more categories of swaps without being classi-
8 fied as a major swap participant for all classes
9 of swaps.”;

10 (17) by inserting after paragraph (39) (as re-
11 designated by paragraph (1)) the following:

12 “(40) PRUDENTIAL REGULATOR.—The term
13 ‘prudential regulator’ means—

14 “(A) the Board, with respect to a swap
15 dealer, major swap participant, security-based
16 swap dealer, or major security-based swap par-
17 ticipant that is—

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

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

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

1 “(i) a national bank; or

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

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

10 “(D) the Farm Credit Administration, in
11 the case of a swap dealer, major swap partici-
12 pant, security-based swap dealer, or major secu-
13 rity-based swap participant that is an institu-
14 tion chartered under the Farm Credit Act of
15 1971 (12 U.S.C. 2001 et seq.).”;

16 (18) in paragraph (41) (as redesignated by
17 paragraph (1))—

18 (A) by striking subparagraph (B);

19 (B) by redesignating subparagraphs (C),
20 (D), and (E) as subparagraphs (B), (C), and
21 (F), respectively;

22 (C) in subparagraph (C) (as so redesign-
23 ated), by striking “and”;

24 (D) by inserting after subparagraph (C)
25 (as so redesignated) the following:

1 “(D) a swap execution facility registered
2 under section 5h;

3 “(E) a swap data repository; and”;

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

6 “(43) SECURITY-BASED SWAP.—The term ‘se-
7 curity-based swap’ has the meaning given the term
8 in section 3(a) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78c(a)).

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

14 (20) in paragraph (47) (as redesignated by
15 paragraph (1)), by striking “subject to section
16 2(h)(7)” and inserting “subject to section 2(h)(5)”;

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

19 “(48) SWAP.—

20 “(A) IN GENERAL.—The term ‘swap’
21 means any agreement, contract, or trans-
22 action—

23 “(i) that is a put, call, cap, floor, col-
24 lar, or similar option of any kind that is
25 for the purchase or sale, or based on the

1 value, of 1 or more interest or other rates,
2 currencies, commodities, securities, instru-
3 ments of indebtedness, indices, quantitative
4 measures, or other financial or economic
5 interests or property of any kind;

6 “(ii) that provides for any purchase,
7 sale, payment, or delivery (other than a
8 dividend on an equity security) that is de-
9 pendent on the occurrence, nonoccurrence,
10 or the extent of the occurrence of an event
11 or contingency associated with a potential
12 financial, economic, or commercial con-
13 sequence;

14 “(iii) that provides on an executory
15 basis for the exchange, on a fixed or con-
16 tingent basis, of 1 or more payments based
17 on the value or level of 1 or more interest
18 or other rates, currencies, commodities, se-
19 curities, instruments of indebtedness, indi-
20 ces, quantitative measures, or other finan-
21 cial or economic interests or property of
22 any kind, or any interest therein or based
23 on the value thereof, and that transfers, as
24 between the parties to the transaction, in
25 whole or in part, the financial risk associ-

1 ated with a future change in any such
2 value or level without also conveying a cur-
3 rent or future direct or indirect ownership
4 interest in an asset (including any enter-
5 prise or investment pool) or liability that
6 incorporates the financial risk so trans-
7 ferred, including any agreement, contract,
8 or transaction commonly known as—

- 9 “(I) an interest rate swap;
10 “(II) a rate floor;
11 “(III) a rate cap;
12 “(IV) a rate collar;
13 “(V) a cross-currency rate swap;
14 “(VI) a basis swap;
15 “(VII) a currency swap;
16 “(VIII) a foreign exchange swap;
17 “(IX) a total return swap;
18 “(X) a broad-based security
19 index swap;
20 “(XI) an equity index swap;
21 “(XII) an equity swap;
22 “(XIII) a debt index swap;
23 “(XIV) a debt swap;
24 “(XV) a credit spread;
25 “(XVI) a credit default swap;

- 1 “(XVII) a credit swap;
2 “(XVIII) a weather swap;
3 “(XIX) an energy swap;
4 “(XX) a metal swap;
5 “(XXI) an agricultural swap;
6 “(XXII) an emissions swap; and
7 “(XXIII) a commodity swap;

8 “(iv) that is an agreement, contract,
9 or transaction that is, or in the future be-
10 comes, known as a swap; or

11 “(v) that is any combination or per-
12 mutation of, or option on, any agreement,
13 contract, or transaction described in
14 clauses (i) through (iv).

15 “(B) EXCLUSIONS.—The term ‘swap’ does
16 not include—

17 “(i) any contract of sale of a com-
18 modity for future delivery (or option on
19 such a contract), leverage contract author-
20 ized under section 19, security futures
21 product, or agreement, contract, or trans-
22 action described in section 2(c)(2)(C)(i) or
23 section 2(e)(2)(D)(i);

24 “(ii) any sale of a nonfinancial com-
25 modity or security for deferred shipment or

1 delivery, so long as the transaction is in-
2 tended to be physically settled;

3 “(iii) any put, call, straddle, option, or
4 privilege on any security, certificate of de-
5 posit, or group or narrow-based index of
6 securities, including any interest therein or
7 based on the value thereof, that is subject
8 to—

9 “(I) the Securities Act of 1933
10 (15 U.S.C. 77a et seq.); and

11 “(II) the Securities Exchange
12 Act of 1934 (15 U.S.C. 78a et seq.);

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

19 “(v) any agreement, contract, or
20 transaction providing for the purchase or
21 sale of 1 or more securities on a fixed basis
22 (not including any swap on a broad-based
23 security index) that is subject to—

24 “(I) the Securities Act of 1933
25 (15 U.S.C. 77a et seq.); and

1 “(II) the Securities Exchange
2 Act of 1934 (15 U.S.C. 78a et seq.);
3 “(vi) any agreement, contract, or
4 transaction providing for the purchase or
5 sale of 1 or more securities on a contingent
6 basis (not including any swap on a broad-
7 based security index) that is subject to the
8 Securities Act of 1933 (15 U.S.C. 77a et
9 seq.) and the Securities Exchange Act of
10 1934 (15 U.S.C. 78a et seq.), unless the
11 agreement, contract, or transaction predi-
12 cates the purchase or sale on the occur-
13 rence of a bona fide contingency that
14 might reasonably be expected to affect or
15 be affected by the creditworthiness of a
16 party other than a party to the agreement,
17 contract, or transaction;
18 “(vii) any note, bond, or evidence of
19 indebtedness that is a security, as defined
20 in section 2(a) of the Securities Act of
21 1933 (15 U.S.C. 77b(a));
22 “(viii) any agreement, contract, or
23 transaction that is—
24 “(I) based on a security; and

1 master agreement contains an agreement,
2 contract, or transaction that is not a swap
3 pursuant to subparagraph (A).

4 “(ii) EXCEPTION.—For purposes of
5 clause (i), the master agreement shall be
6 considered to be a swap only with respect
7 to each agreement, contract, or transaction
8 covered by the master agreement that is a
9 swap pursuant to subparagraph (A).

10 “(D) MIXED SWAPS.—Notwithstanding
11 subparagraph (B)(x), an agreement, contract,
12 or transaction that contains elements described
13 in subparagraph (A) and elements of a security-
14 based swap described in subparagraphs (A)
15 through (C) of section 3(a)(68) of the Securi-
16 ties Exchange Act of 1934 (15 U.S.C.
17 78c(a)(68)) shall be considered to be a swap,
18 unless the elements described in subparagraph
19 (A) are de minimis, as determined by the Com-
20 mission by rule, regulation, or order in con-
21 sultation with the Securities and Exchange
22 Commission.

23 “(E) TREATMENT OF FOREIGN EXCHANGE
24 SWAPS AND FORWARDS.—

1 “(i) IN GENERAL.—Foreign exchange
2 swaps and foreign exchange forwards shall
3 be considered swaps under this paragraph
4 unless the Secretary makes a written de-
5 termination that either foreign exchange
6 swaps or foreign exchange forwards or
7 both—

8 “(I) should be not be regulated
9 as swaps under this Act; and

10 “(II) are not structured to evade
11 the Wall Street Transparency and Ac-
12 countability Act of 2010 in violation
13 of any rule promulgated by the Com-
14 mission pursuant to section 111(e) of
15 that Act.

16 “(ii) CONGRESSIONAL NOTICE; EFFEC-
17 TIVENESS.—The Secretary shall submit
18 any written determination under clause (i)
19 to the appropriate committees of Congress,
20 including the Committee on Agriculture,
21 Nutrition, and Forestry of the Senate and
22 the Committee on Agriculture of the House
23 of Representatives. Any such written deter-
24 mination by the Secretary shall not be ef-

1 fective until it is submitted to the appro-
2 priate committees of Congress.

3 “(iii) REPORTING.—Notwithstanding
4 a written determination by the Secretary
5 under clause (i), all foreign exchange
6 swaps and foreign exchange forwards shall
7 be reported to either a swap data reposi-
8 tory, or, if there is no swap data repository
9 that would accept such swaps or forwards,
10 to the Commission pursuant to section 4r
11 within such time period as the Commission
12 may by rule or regulation prescribe.

13 “(iv) BUSINESS STANDARDS.—Not-
14 withstanding clauses (ix) and (x) of sub-
15 paragraph (B) and clause (ii), any party to
16 a foreign exchange swap or forward that is
17 a swap dealer or major swap participant
18 shall conform to the business conduct
19 standards contained in section 4s(h).

20 “(v) SECRETARY.—For purposes of
21 this subparagraph only, the term ‘Sec-
22 retary’ means the Secretary of the Treas-
23 ury.

24 “(F) EXCEPTION FOR CERTAIN FOREIGN
25 EXCHANGE SWAPS AND FORWARDS.—

1 “(i) REGISTERED ENTITIES.—Not-
2 withstanding any written determination
3 made under subparagraph (E), a swap
4 shall include any foreign exchange swap
5 and any foreign exchange forward that is
6 listed and traded on or subject to the rules
7 of a designated contract market or a swap
8 execution facility, or that is cleared by a
9 derivatives clearing organization.

10 “(ii) RETAIL TRANSACTIONS.—Noth-
11 ing in subparagraph (E) shall affect, or be
12 construed to affect, the applicability of this
13 Act or the jurisdiction of the Commission
14 with respect to agreements, contracts, or
15 transactions in foreign currency pursuant
16 to section 2(c)(2).

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

23 “(50) SWAP DEALER.—

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

1 “(i) holds itself out as a dealer in
2 swaps;

3 “(ii) makes a market in swaps;

4 “(iii) regularly engages in the pur-
5 chase and sale of swaps in the ordinary
6 course of business; or

7 “(iv) 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 or activities and
14 considered not to be a swap dealer for other
15 types, classes, or categories of swaps or activi-
16 ties.

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

1 “(A) facilitates the execution of swaps be-
2 tween persons; and

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

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

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

11 (1) the term “commercial risk”; and

12 (2) any other term included in an amendment
13 made by this Act.

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

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

1 “(A) unless the Commission is expressly
2 authorized by any provision described in this
3 subparagraph to grant exemptions, with respect
4 to amendments made by title I of the Wall
5 Street Transparency and Accountability Act of
6 2010—

7 “(i) with respect to—

8 “(I) paragraphs (2), (3), (4), (5),
9 and (8), clause (vii)(III) of paragraph
10 (18), paragraphs (24), (25), (32),
11 (33), (39), (40), (42), (43), (47),
12 (48), (49), and (50) of section 1a, and
13 sections 2(a)(13), 2(c)(D), 4a(a),
14 4a(b), 4d(e), 4d(d), 4r, 4s, 5b(a),
15 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i),
16 8e, and 21; and

17 “(II) section 206(e) of the
18 Gramm-Leach-Bliley Act (Public Law
19 106–102; 15 U.S.C. 78c note); and

20 “(ii) in subsection (c) of section 111
21 and section 132; and

22 “(B) the Commission and the Securities
23 and Exchange Commission may by rule, regula-
24 tion, or order jointly exclude any agreement,
25 contract, or transaction from section

1 2(a)(1)(D)) if the Commission determines that
2 the exemption would be consistent with the
3 public interest.”.

4 (e) CONFORMING AMENDMENTS.—

5 (1) Section 2(e)(2)(B)(i)(II) of the Commodity
6 Exchange Act (7 U.S.C. 2(e)(2)(B)(i)(II)) is amend-
7 ed—

8 (A) in item (cc)—

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

12 (ii) in subitem (BB), by striking “sec-
13 tion 1a(20)” and inserting “section 1a”;
14 and

15 (B) in item (dd), by striking “section
16 1a(12)(A)(ii)” and inserting “section
17 1a(19)(A)(ii)”.

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

21 (3) Section 4q(a)(1) of the Commodity Ex-
22 change Act (7 U.S.C. 6o-1(a)(1)) is amended by
23 striking “section 1a(4)” and inserting “section
24 1a(10)”.

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

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

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

12 (7) Section 5c(e)(2)(B) of the Commodity Ex-
13 change Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by
14 striking “section 1a(4)” and inserting “section
15 1a(10)”.

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

19 (A) in subclause (I), by striking “section
20 1a(12)(B)(ii)” and inserting “section
21 1a(19)(B)(ii)”; and

22 (B) in subclause (II), by striking “section
23 1a(12)” and inserting “section 1a(19)”.

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

- 1 (A) in section 402—
- 2 (i) in subsection (a)(7), by striking
- 3 “section 1a(20)” and inserting “section
- 4 1a”;
- 5 (ii) in subsection (b)(2), by striking
- 6 “section 1a(12)” and inserting “section
- 7 1a”;
- 8 (iii) in subsection (c), by striking
- 9 “section 1a(4)” and inserting “section 1a”;
- 10 and
- 11 (iv) in subsection (d)—
- 12 (I) in the matter preceding para-
- 13 graph (1), by striking “section 1a(4)”
- 14 and inserting “section 1a(10)”;
- 15 (II) in paragraph (1)—
- 16 (aa) in subparagraph (A),
- 17 by striking “section 1a(12)” and
- 18 inserting “section 1a”; and
- 19 (bb) in subparagraph (B),
- 20 by striking “section 1a(33)” and
- 21 inserting “section 1a”;
- 22 (III) in paragraph (2)—
- 23 (aa) in subparagraph (A),
- 24 by striking “section 1a(10)” and
- 25 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) PROHIBITION ON GAMING CONTRACTS.—Section
5 2(a)(1) of the Commodity Exchange Act (7 U.S.C.
6 2(a)(1)) is amended by adding at the end the following:

7 “(G) PROHIBITION ON GAMING CON-
8 TRACTS.—

9 “(i) IN GENERAL.—The Commission
10 shall not approve for listing and trading,
11 or permit to be listed and traded, on a
12 board of trade, designated contract mar-
13 ket, or any other facility which is reg-
14 istered with or under jurisdiction of the
15 Commission any agreements, contracts,
16 transactions, or swaps that constitute gam-
17 ing contracts.

18 “(ii) REVIEW.—For purposes of com-
19 pliance with this subparagraph, the Com-
20 mission shall review any agreement, con-
21 tract, or transaction in an excluded com-
22 modity which may be based on an occur-
23 rence, extent of an occurrence, or contin-
24 gency to ensure compliance with this sub-
25 paragraph.”.

1 (c) REGULATION OF SWAPS UNDER FEDERAL AND
2 STATE LAW.—Section 12 of the Commodity Exchange Act
3 (7 U.S.C. 16) is amended by adding at the end the fol-
4 lowing:

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

7 “(1) shall not be considered to be insurance;
8 and

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

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

14 “(1) shall not be considered to be a security;
15 and

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

18 (d) AGREEMENTS, CONTRACTS, AND TRANSACTIONS
19 TRADED ON AN ORGANIZED EXCHANGE.—Section
20 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
21 2(c)(2)(A)) is amended—

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

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

24 and

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

1 “(ii) a swap; or”.

2 (e) APPLICABILITY.—Section 2 of the Commodity
3 Exchange Act (7 U.S.C. 2) (as amended by section
4 113(a)(3)) is amended by adding at the end the following:

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

11 “(1) have a direct and significant connection
12 with activities in, or effect on, commerce of the
13 United States; or

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

20 **SEC. 113. CLEARING.**

21 (a) CLEARING REQUIREMENT.—

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

24 (A) by striking subsections (d), (e), (g),
25 and (h); and

1 (B) by redesignating subsection (i) as sub-
2 section (g).

3 (2) SWAPS; LIMITATION ON PARTICIPATION.—

4 Section 2 of the Commodity Exchange Act (7 U.S.C.
5 2) (as amended by paragraph (1)) is amended by in-
6 serting after subsection (c) the following:

7 “(d) SWAPS.—Nothing in this Act (other than sub-
8 paragraphs (A) and (B) of subsection (a)(1), subsections
9 (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c),
10 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section
11 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o,
12 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and
13 (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections
14 (e)(2) and (f) of section 12, subsections (a) and (b) of
15 section 13, sections 17, 20, 21, and 22(a)(4), and any
16 other provision of this Act that is applicable to registered
17 entities and Commission registrants) governs or applies to
18 a swap.

19 “(e) LIMITATION ON PARTICIPATION.—It shall be
20 unlawful for any person, other than an eligible contract
21 participant, to enter into a swap unless the swap is en-
22 tered into on, or subject to the rules of, a board of trade
23 designated as a contract market under section 5.”.

24 (3) MANDATORY CLEARING OF SWAPS.—Section

25 2 of the Commodity Exchange Act (7 U.S.C. 2) is

1 amended by inserting after subsection (g) (as rededesignated by paragraph (1)(B)) the following:

3 “(h) CLEARING REQUIREMENT.—

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

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

10 “(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

14 “(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

16 “(A) IN GENERAL.—In accordance with subparagraph (C), the Commission shall, consistent with the public interest, adopt rules under the expedited process described in subparagraph (B) to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.

23 “(B) EXPEDITED RULEMAKING AUTHORITY.—

24

1 “(i) PROCEDURE.—The promulgation
2 of regulations under subparagraph (A) and
3 issuance of orders under subparagraph
4 (F)(ii)(II)(aa) may be made without re-
5 gard to—

6 “(I) the notice and comment pro-
7 visions of section 553 of title 5,
8 United States Code; and

9 “(II) chapter 35 of title 44,
10 United States Code (commonly known
11 as the ‘Paperwork Reduction Act’).

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

18 “(C) FACTORS.—In carrying out subpara-
19 graph (A), the Commission shall consider—

20 “(i) the volume and open interest of
21 transactions;

22 “(ii) as compared to other agree-
23 ments, contracts, or transactions that are
24 centrally cleared, whether any material dif-
25 ferences exist;

1 “(iii) the impact on the mitigation of
2 systemic risk, taking into account the size
3 of the contract; or

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

6 “(D) COMMISSION REVIEW OF NEW
7 SWAPS.—The Commission—

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

15 “(ii) may review any swap, or any
16 group, category, type, or class of swap
17 that—

18 “(I) is not currently listed or pro-
19 posed by a derivatives clearing organi-
20 zation; and

21 “(II) the Commission determines
22 to be appropriate for review;

23 “(iii) shall determine by order whether
24 the new swap, or group, category, type, or
25 class of swaps being listed for clearing is

1 required to be cleared based on the criteria
2 established in the rule adopted by the
3 Commission under subparagraph (A);

4 “(iv) shall provide a public comment
5 period regarding the determination of the
6 Commission as to whether the clearing re-
7 quirements shall apply to the new swap or
8 group, category, type, or class of swaps
9 that are listed for clearing; and

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

19 “(E) EFFECT.—Nothing in subparagraph
20 (D) affects the ability of the derivatives clearing
21 organization described in that subparagraph to
22 list for permissive clearing any swap, or group,
23 category, type, or class of swaps.

24 “(F) MANDATORY CLEARING.—

1 “(III) the swap is listed for clear-
2 ing by a registered derivatives clearing
3 organization.

4 “(G) PREVENTION OF EVASION.—

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

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

21 “(I) investigate the relevant facts
22 and circumstances;

23 “(II) within 30 days issue a pub-
24 lic report containing the results of the
25 investigation; and

1 “(III) take such actions as the
2 Commission determines to be nec-
3 essary and in the public interest,
4 which may include requiring the re-
5 taining of adequate margin or capital
6 by parties to the swap, group, cat-
7 egory, type, or class of swaps.

8 “(H) STAY OF CLEARING REQUIRE-
9 MENT.—

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

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

20 “(II) the clearing arrangement.

21 “(ii) DEADLINE.—Not later than 30
22 days after the date on which the Commis-
23 sion issues a stay under clause (i), the
24 Commission shall make a determination in
25 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.**—

19 “**(i) IN GENERAL.**—In this paragraph,
20 the term ‘commercial end user’ means any
21 person other than a financial entity de-
22 scribed in clause (ii) who, as its primary
23 business activity, owns, uses, produces,
24 processes, manufactures, distributes, mer-
25 chandises, or markets goods, services, or

1 commodities (which shall include but not
2 be limited to coal, natural gas, electricity,
3 ethanol, crude oil, gasoline, propane, dis-
4 tillates, and other hydrocarbons) either in-
5 dividually or in a fiduciary capacity.

6 “(ii) FINANCIAL ENTITY.—The term
7 ‘financial entity’ means—

8 “(I) a swap dealer, major swap
9 participant, security-based swap deal-
10 er, or major security-based swap par-
11 ticipant;

12 “(II) a person predominantly en-
13 gaged in activities that are financial
14 in nature;

15 “(III) a commodity pool or a pri-
16 vate fund as defined in section 202(a)
17 of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b–2(a)); or

19 “(IV) a person that is registered
20 or required to be registered with the
21 Commission.

22 “(B) END USER CLEARING EXEMPTION.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), in the event that a swap is subject to
25 the mandatory clearing requirement under

1 paragraph (2), and 1 of the counterparties
2 to the swap is a commercial end user, that
3 counterparty—

4 “(I)(aa) may elect not to clear
5 the swap, as required under para-
6 graph (2); or

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

9 “(II) if the end user makes an
10 election under subclause (I)(bb), shall
11 have the sole right to select the de-
12 rivatives clearing organization at
13 which the swap will be cleared.

14 “(ii) LIMITATION.—A commercial end
15 user may only make an election under
16 clause (i) if the end user is using the swap
17 to hedge commercial risk.

18 “(C) TREATMENT OF AFFILIATES.—

19 “(i) IN GENERAL.—An affiliate of a
20 commercial end user may make an election
21 under subparagraph (B)(i) only if the affil-
22 iate, acting on behalf of the commercial
23 end user and as an agent, uses the swap
24 to hedge or mitigate the commercial risk of
25 the commercial end user parent or other

1 affiliate of the commercial end user that is
2 not a financial entity.

3 “(ii) PROHIBITION RELATING TO CER-
4 TAIN AFFILIATES.—An affiliate of a com-
5 mercial end user shall not use the exemp-
6 tion under subparagraph (B) if the affil-
7 iate is—

8 “(I) a swap dealer;

9 “(II) a security-based swap deal-
10 er;

11 “(III) a major swap participant;

12 “(IV) a major security-based
13 swap participant;

14 “(V) an issuer that would be an
15 investment company, as defined in
16 section 3 of the Investment Company
17 Act of 1940 (15 U.S.C. 80a–3), but
18 for paragraph (1) or (7) of subsection
19 (c) of that Act (15 U.S.C. 80a–3(c));

20 “(VI) a commodity pool;

21 “(VII) a bank holding company
22 with over \$50,000,000,000 in consoli-
23 dated assets; or

1 “(VIII) an affiliate of any entity
2 described in subclauses (I) through
3 (VII).

4 “(D) ABUSE OF EXEMPTION.—The Com-
5 mission may prescribe such rules, or issue inter-
6 pretations of the rules, to request information
7 from those entities claiming the clearing exemp-
8 tion as the Commission determines to be nec-
9 essary to prevent abuse of the exemption de-
10 scribed in subparagraph (B).

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

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

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

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

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

12 (c) GRANDFATHER PROVISIONS.—

13 (1) LEGAL CERTAINTY FOR CERTAIN TRANS-
14 ACTIONS IN EXEMPT COMMODITIES.—Not later than
15 60 days after the date of enactment of this Act, a
16 person may submit to the Commodity Futures Trad-
17 ing Commission a petition to remain subject to sec-
18 tion 2(h) of the Commodity Exchange Act (7 U.S.C.
19 2(h)) (as in effect on the day before the date of en-
20 actment of this Act).

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

1 (A) shall consider any petition submitted
2 under subparagraph (A) in a prompt manner;
3 and

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

9 (d) MANDATORY EXCHANGE TRADING.—

10 (1) REQUIREMENT.—A swap that is subject to
11 the mandatory clearing requirement of section
12 2(h)(2)(F) of the Commodity Exchange Act (7
13 U.S.C. 2(h)(2)(F)) shall not be traded except on or
14 through a board of trade designated as a contract
15 market under section 5 of that Act (7 U.S.C. 7), or
16 on or through a swap execution facility registered
17 under section 5h of that Act (as added by section
18 122), that makes the swap available for trading.

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

21 (A) if no designated contract market or
22 swap execution facility makes the swap avail-
23 able for trading; or

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

4 (3) AGRICULTURAL SWAPS.—

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

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

23 (4) REQUIRED REPORTING.—If the exception
24 described in paragraph (2) applies, and there is no
25 facility that makes the swap available to trade, the

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

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

19 “(3) EXCEPTIONS.—

20 “(A) USE OF FUNDS.—

21 “(i) IN GENERAL.—Notwithstanding
22 paragraph (2), money, securities, and
23 property of a swaps customer of a futures
24 commission merchant described in para-
25 graph (2) may, for convenience, be com-

1 mingled and deposited in the same 1 or
2 more accounts with any bank or trust com-
3 pany or with a derivatives clearing organi-
4 zation.

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

19 “(B) COMMISSION ACTION.—Notwith-
20 standing paragraph (2), in accordance with
21 such terms and conditions as the Commission
22 may prescribe by rule, regulation, or order, any
23 money, securities, or property of the swaps cus-
24 tomer of a futures commission merchant de-
25 scribed in paragraph (2) may be commingled

1 and deposited as provided in this section with
2 any other money, securities, or property re-
3 ceived by the futures commission merchant and
4 required by the Commission to be separately ac-
5 counted for and treated and dealt with as be-
6 longing to the swaps customer of the futures
7 commission merchant.

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

19 “(5) COMMODITY CONTRACT.—A swap cleared
20 by or through a derivatives clearing organization
21 shall be considered to be a commodity contract as
22 such term is defined in section 761 of title 11,
23 United States Code, with regard to all money, secu-
24 rities, and property of any swaps customer received
25 by a futures commission merchant or a derivatives

1 clearing organization to margin, guarantee, or se-
2 cure the swap (including money, securities, or prop-
3 erty accruing to the customer as the result of the
4 swap).

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

15 (b) BANKRUPTCY TREATMENT OF CLEARED
16 SWAPS.—Section 761 of title 11, United States Code, is
17 amended—

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

20 “(F)(i) any other contract, option, agree-
21 ment, or transaction that is similar to a con-
22 tract, option, agreement, or transaction referred
23 to in this paragraph; and

24 “(ii) with respect to a futures commission
25 merchant or a clearing organization, any other

1 contract, option, agreement, or transaction, in
2 each case, that is cleared by a clearing organi-
3 zation;” and

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

7 (c) SEGREGATION REQUIREMENTS FOR UNCLEARED
8 SWAPS.—Section 4s of the Commodity Exchange Act (as
9 added by section 120) is amended by adding at the end
10 the following:

11 “(1) SEGREGATION REQUIREMENTS.—

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

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

22 “(B) SEGREGATION AND MAINTENANCE OF
23 FUNDS.—At the request of a counterparty to a
24 swap that provides funds or other property to
25 a swap dealer or major swap participant to

1 margin, guarantee, or secure the obligations of
2 the counterparty, the swap dealer or major
3 swap participant shall—

4 “(i) segregate the funds or other
5 property for the benefit of the
6 counterparty; and

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

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

15 “(A) apply only to a swap between a
16 counterparty and a swap dealer or major swap
17 participant that is not submitted for clearing to
18 a derivatives clearing organization; and

19 “(B)(i) not apply to variation margin pay-
20 ments; or

21 “(ii) not preclude any commercial arrange-
22 ment regarding—

23 “(I) the investment of segregated
24 funds or other property that may only be
25 invested in such investments as the Com-

1 mission may permit by rule or regulation;

2 and

3 “(II) the related allocation of gains

4 and losses resulting from any investment

5 of the segregated funds or other property.

6 “(3) USE OF INDEPENDENT THIRD-PARTY

7 CUSTODIANS.—The segregated account described in

8 paragraph (1) shall be—

9 “(A) carried by an independent third-party

10 custodian; and

11 “(B) designated as a segregated account

12 for and on behalf of the counterparty.

13 “(4) REPORTING REQUIREMENT.—If the

14 counterparty does not choose to require segregation

15 of the funds or other property supplied to margin,

16 guarantee, or secure the obligations of the

17 counterparty, the swap dealer or major swap partici-

18 pant shall report to the counterparty of the swap

19 dealer or major swap participant on a quarterly

20 basis that the back office procedures of the swap

21 dealer or major swap participant relating to margin

22 and collateral requirements are in compliance with

23 the agreement of the counterparties.”.

1 **SEC. 115. DERIVATIVES CLEARING ORGANIZATIONS.**

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

6 “(a) REGISTRATION REQUIREMENT.—

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

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

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

20 “(ii) a security futures product
21 cleared by a clearing agency registered
22 with the Securities and Exchange Commis-
23 sion under the Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.); or

25 “(B) a swap.

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

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

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

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

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

23 “(1) IN GENERAL.—A bank or clearing agency
24 registered with the Securities and Exchange Com-
25 mission under the Securities Exchange Act of 1934

1 (15 U.S.C. 78a et seq.) that is required to be reg-
2 istered as a derivatives clearing organization under
3 this section is deemed to be registered under this
4 section to the extent that, before the date of enact-
5 ment of this subsection—

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

8 “(B) the clearing agency cleared swaps.

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

17 “(i) EXEMPTIONS.—The Commission may exempt,
18 conditionally or unconditionally, a derivatives clearing or-
19 ganization from registration under this section for the
20 clearing of swaps if the Commission determines that the
21 derivatives clearing organization is subject to comparable,
22 comprehensive supervision and regulation by the Securi-
23 ties and Exchange Commission or the appropriate govern-
24 ment authorities in the home country of the organization.
25 Such conditions may include, but are not limited to, re-

1 quiring that the derivatives clearing organization be avail-
2 able for inspection by the Commission and make available
3 all information requested by the Commission.

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

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

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

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

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

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

23 “(D) be responsible for administering each
24 policy and procedure that is required to be es-
25 tablished pursuant to this section;

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

6 “(F) establish procedures for the remedi-
7 ation of noncompliance issues identified by the
8 compliance officer through any—

9 “(i) compliance office review;

10 “(ii) look-back;

11 “(iii) internal or external audit find-
12 ing;

13 “(iv) self-reported error; or

14 “(v) validated complaint; and

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

19 “(3) ANNUAL REPORTS.—

20 “(A) IN GENERAL.—In accordance with
21 rules prescribed by the Commission, the chief
22 compliance officer shall annually prepare and
23 sign a report that contains a description of—

24 “(i) the compliance of the derivatives
25 clearing organization of the compliance of-

1 ficer with respect to this Act (including
2 regulations); and

3 “(ii) each policy and procedure of the
4 derivatives clearing organization of the
5 compliance officer (including the code of
6 ethics and conflict of interest policies of
7 the derivatives clearing organization).

8 “(B) REQUIREMENTS.—A compliance re-
9 port under subparagraph (A) shall—

10 “(i) accompany each appropriate fi-
11 nancial report of the derivatives clearing
12 organization that is required to be fur-
13 nished to the Commission pursuant to this
14 section; and

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

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

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

24 “(A) COMPLIANCE.—

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

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

17 “(B) FINANCIAL RESOURCES.—

18 “(i) IN GENERAL.—Each derivatives
19 clearing organization shall have adequate
20 financial, operational, and managerial re-
21 sources, as determined by the Commission,
22 to discharge each responsibility of the de-
23 rivatives clearing organization.

24 “(ii) MINIMUM AMOUNT OF FINAN-
25 CIAL RESOURCES.—Each derivatives clear-

1 ing organization shall possess financial re-
2 sources that, at a minimum, exceed the
3 total amount that would—

4 “(I) enable the derivatives clear-
5 ing organization to meet each finan-
6 cial obligation of the derivatives clear-
7 ing organization to each member and
8 participant of the derivatives clearing
9 organization; and

10 “(II) enable the derivatives clear-
11 ing organization to cover the oper-
12 ating costs of the derivatives clearing
13 organization for a period of 1 year (as
14 calculated on a rolling basis).

15 “(C) PARTICIPANT AND PRODUCT ELIGI-
16 BILITY.—

17 “(i) IN GENERAL.—Each derivatives
18 clearing organization shall establish—

19 “(I) appropriate admission and
20 continuing eligibility standards (in-
21 cluding sufficient financial resources
22 and operational capacity to meet obli-
23 gations arising from participation in
24 the derivatives clearing organization)
25 for members of, and participants in,

1 the derivatives clearing organization;
2 and

3 “(II) appropriate standards for
4 determining the eligibility of agree-
5 ments, contracts, and transactions
6 submitted to the derivatives clearing
7 organization for clearing.

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

15 “(iii) REQUIREMENTS.—The partici-
16 pation and membership requirements of
17 each derivatives clearing organization
18 shall—

19 “(I) be objective;

20 “(II) be publicly disclosed; and

21 “(III) permit fair and open ac-
22 cess.

23 “(D) RISK MANAGEMENT.—

24 “(i) IN GENERAL.—Each derivatives
25 clearing organization shall ensure that the

1 derivatives clearing organization possesses
2 the ability to manage the risks associated
3 with discharging the responsibilities of the
4 derivatives clearing organization through
5 the use of appropriate tools and proce-
6 dures.

7 “(ii) MEASUREMENT OF CREDIT EX-
8 POSURE.—Each derivatives clearing orga-
9 nization shall—

10 “(I) not less than once during
11 each business day of the derivatives
12 clearing organization, measure the
13 credit exposures of the derivatives
14 clearing organization to each member
15 and participant of the derivatives
16 clearing organization; and

17 “(II) monitor each exposure de-
18 scribed in subelause (I) periodically
19 during the business day of the deriva-
20 tives clearing organization.

21 “(iii) LIMITATION OF EXPOSURE TO
22 POTENTIAL LOSSES FROM DEFAULTS.—
23 Each derivatives clearing organization,
24 through margin requirements and other
25 risk control mechanisms, shall limit the ex-

1 “(i) complete money settlements on a
2 timely basis (but not less frequently than
3 once each business day);

4 “(ii) employ money settlement ar-
5 rangements to eliminate or strictly limit
6 the exposure of the derivatives clearing or-
7 ganization to settlement bank risks (in-
8 cluding credit and liquidity risks from the
9 use of banks to effect money settlements);

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

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

15 “(v) possess the ability to comply with
16 each term and condition of any permitted
17 netting or offset arrangement with any
18 other clearing organization;

19 “(vi) regarding physical settlements,
20 establish rules that clearly state each obli-
21 gation of the derivatives clearing organiza-
22 tion with respect to physical deliveries; and

23 “(vii) ensure that each risk arising
24 from an obligation described in clause (vi)
25 is identified and managed.

1 “(F) TREATMENT OF FUNDS.—

2 “(i) REQUIRED STANDARDS AND PRO-
3 CEDURES.—Each derivatives clearing orga-
4 nization shall establish standards and pro-
5 cedures that are designed to protect and
6 ensure the safety of member and partici-
7 pant funds and assets.

8 “(ii) HOLDING OF FUNDS AND AS-
9 SETS.—Each derivatives clearing organiza-
10 tion shall hold member and participant
11 funds and assets in a manner by which to
12 minimize the risk of loss or of delay in the
13 access by the derivatives clearing organiza-
14 tion to the assets and funds.

15 “(iii) PERMISSIBLE INVESTMENTS.—
16 Funds and assets invested by a derivatives
17 clearing organization shall be held in in-
18 struments with minimal credit, market,
19 and liquidity risks.

20 “(G) DEFAULT RULES AND PROCE-
21 DURES.—

22 “(i) IN GENERAL.—Each derivatives
23 clearing organization shall have rules and
24 procedures designed to allow for the effi-

1 cient, fair, and safe management of events
2 during which members or participants—

3 “(I) become insolvent; or

4 “(II) otherwise default on the ob-
5 ligations of the members or partici-
6 pants to the derivatives clearing orga-
7 nization.

8 “(ii) DEFAULT PROCEDURES.—Each
9 derivatives clearing organization shall—

10 “(I) clearly state the default pro-
11 cedures of the derivatives clearing or-
12 ganization;

13 “(II) make publicly available the
14 default rules of the derivatives clear-
15 ing organization; and

16 “(III) ensure that the derivatives
17 clearing organization may take timely
18 action—

19 “(aa) to contain losses and
20 liquidity pressures; and

21 “(bb) to continue meeting
22 each obligation of the derivatives
23 clearing organization.

24 “(H) RULE ENFORCEMENT.—Each deriva-
25 tives clearing organization shall—

1 “(i) maintain adequate arrangements
2 and resources for—

3 “(I) the effective monitoring and
4 enforcement of compliance with the
5 rules of the derivatives clearing orga-
6 nization; and

7 “(II) the resolution of disputes;

8 “(ii) have the authority and ability to
9 discipline, limit, suspend, or terminate the
10 activities of a member or participant due
11 to a violation by the member or participant
12 of any rule of the derivatives clearing orga-
13 nization; and

14 “(iii) report to the Commission re-
15 garding rule enforcement activities and
16 sanctions imposed against members and
17 participants as provided in clause (ii).

18 “(I) SYSTEM SAFEGUARDS.—Each deriva-
19 tives clearing organization shall—

20 “(i) establish and maintain a program
21 of risk analysis and oversight to identify
22 and minimize sources of operational risk
23 through the development of appropriate
24 controls and procedures, and automated

1 systems, that are reliable, secure, and have
2 adequate scalable capacity;

3 “(ii) establish and maintain emer-
4 gency procedures, backup facilities, and a
5 plan for disaster recovery that allows for—

6 “(I) the timely recovery and re-
7 sumption of operations of the deriva-
8 tives clearing organization; and

9 “(II) the fulfillment of each obli-
10 gation and responsibility of the de-
11 rivatives clearing organization; and

12 “(iii) periodically conduct tests to
13 verify that the backup resources of the de-
14 rivatives clearing organization are suffi-
15 cient to ensure daily processing, clearing,
16 and settlement.

17 “(J) REPORTING.—Each derivatives clear-
18 ing organization shall provide to the Commis-
19 sion all information that the Commission deter-
20 mines to be necessary to conduct oversight of
21 the derivatives clearing organization.

22 “(K) RECORDKEEPING.—Each derivatives
23 clearing organization shall maintain records of
24 all activities related to the business of the de-

1 derivatives clearing organization as a derivatives
2 clearing organization—

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

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

7 “(L) PUBLIC INFORMATION.—

8 “(i) IN GENERAL.—Each derivatives
9 clearing organization shall provide to mar-
10 ket participants sufficient information to
11 enable the market participants to identify
12 and evaluate accurately the risks and costs
13 associated with using the services of the
14 derivatives clearing organization.

15 “(ii) AVAILABILITY OF INFORMA-
16 TION.—Each derivatives clearing organiza-
17 tion shall make information concerning the
18 rules and operating procedures governing
19 the clearing and settlement systems of the
20 derivatives clearing organization available
21 to market participants.

22 “(iii) PUBLIC DISCLOSURE.—Each de-
23 rivatives clearing organization shall dis-
24 close publicly and to the Commission infor-
25 mation concerning—

1 “(I) the terms and conditions of
2 each contract, agreement, and other
3 transaction cleared and settled by the
4 derivatives clearing organization;

5 “(II) each clearing and other fee
6 that the derivatives clearing organiza-
7 tion charges the members and partici-
8 pants of the derivatives clearing orga-
9 nization;

10 “(III) the margin-setting method-
11 ology, and the size and composition,
12 of the financial resource package of
13 the derivatives clearing organization;

14 “(IV) daily settlement prices, vol-
15 ume, and open interest for each con-
16 tract settled or cleared by the deriva-
17 tives clearing organization; and

18 “(V) any other matter relevant to
19 participation in the settlement and
20 clearing activities of the derivatives
21 clearing organization.

22 “(M) INFORMATION-SHARING.—Each de-
23 rivatives clearing organization shall—

24 “(i) enter into, and abide by the terms
25 of, each appropriate and applicable domes-

1 tie and international information-sharing
2 agreement; and

3 “(ii) use relevant information obtained
4 from each agreement described in clause
5 (i) in carrying out the risk management
6 program of the derivatives clearing organi-
7 zation.

8 “(N) ANTITRUST CONSIDERATIONS.—Un-
9 less appropriate to achieve the purposes of this
10 Act, a derivatives clearing organization may
11 not—

12 “(i) adopt any rule or take any action
13 that results in any unreasonable restraint
14 of trade; or

15 “(ii) impose any material anticompeti-
16 tive burden.

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

19 “(i) GOVERNANCE ARRANGEMENTS.—
20 Each derivatives clearing organization shall
21 establish governance arrangements that
22 are transparent—

23 “(I) to fulfill public interest re-
24 quirements; and

1 “(II) to support the objectives of
2 owners and participants.

3 “(ii) FITNESS STANDARDS.—Each de-
4 rivatives clearing organization shall estab-
5 lish and enforce appropriate fitness stand-
6 ards for—

7 “(I) directors;

8 “(II) members of any disciplinary
9 committee;

10 “(III) members of the derivatives
11 clearing organization;

12 “(IV) any other individual or en-
13 tity with direct access to the settle-
14 ment or clearing activities of the de-
15 rivatives clearing organization; and

16 “(V) any party affiliated with
17 any individual or entity described in
18 this clause.

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

21 “(i) establish and enforce rules to
22 minimize conflicts of interest in the deci-
23 sionmaking process of the derivatives clear-
24 ing organization; and

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

3 “(Q) COMPOSITION OF GOVERNING
4 BOARDS.—Each derivatives clearing organiza-
5 tion shall ensure that the composition of the
6 governing board or committee of the derivatives
7 clearing organization includes market partici-
8 pants.

9 “(R) LEGAL RISK.—Each derivatives clear-
10 ing organization shall have a well-founded,
11 transparent, and enforceable legal framework
12 for each aspect of the activities of the deriva-
13 tives clearing organization.”.

14 (d) CONFLICTS OF INTEREST.—The Commodity Fu-
15 tures Trading Commission shall adopt rules mitigating
16 conflicts of interest in connection with the conduct of busi-
17 ness by a swap dealer or a major swap participant with
18 a derivatives clearing organization, board of trade, or a
19 swap execution facility that clears or trades swaps in
20 which the swap dealer or major swap participant has a
21 material debt or equity investment.

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

1 “(k) REPORTING REQUIREMENTS.—

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

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

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

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

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

21 “(A) the Board;

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

24 “(C) each appropriate prudential regulator;

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

3 “(E) the Department of Justice; and

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

6 “(i) foreign financial supervisors (in-
7 cluding foreign futures authorities);

8 “(ii) foreign central banks; and

9 “(iii) foreign ministries.

10 “(4) CONFIDENTIALITY AND INDEMNIFICATION
11 AGREEMENT.—Before the Commission may share in-
12 formation with any entity described in paragraph
13 (3)—

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

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

24 “(5) PUBLIC INFORMATION.—Each derivatives
25 clearing organization that clears swaps shall provide

1 to the Commission (including any designee of the
2 Commission) information under paragraph (2) in
3 such form and at such frequency as is required by
4 the Commission to comply with the public reporting
5 requirements contained in section 2(a)(13).”.

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

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

12 (2) by striking “. is a party.” and inserting “,
13 is a party.”.

14 (g) LEGAL CERTAINTY FOR IDENTIFIED BANKING
15 PRODUCTS.—

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

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

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

23 (C) in section 408 (7 U.S.C. 27f)—

24 (i) in subsection (c)—

1 (I) by striking “in the case” and
2 all that follows through “a hybrid”
3 and inserting “in the case of a hy-
4 brid”;

5 (II) by striking “; or” and insert-
6 ing a period; and

7 (III) by striking paragraph (2);

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

9 (iii) by redesignating subsection (c) as
10 subsection (b).

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

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

16 “(a) EXCLUSION.—Except as provided in subsection
17 (b) or (c)—

18 “(1) the Commodity Exchange Act (7 U.S.C. 1
19 et seq.) shall not apply to, and the Commodity Fu-
20 tures Trading Commission shall not exercise regu-
21 latory authority under the Commodity Exchange Act
22 (7 U.S.C. 1 et seq.) with respect to, an identified
23 banking product; and

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

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

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

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

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

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

4 “(2) meets the definition of swap in section
5 1a(46) of the Commodity Exchange Act or security-
6 based swap in section 3(a)(68) of the Securities Ex-
7 change Act of 1934; and

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

15 **SEC. 116. RULEMAKING ON CONFLICT OF INTEREST.**

16 (a) IN GENERAL.—The Commodity Futures Trading
17 Commission shall determine whether to adopt rules to es-
18 tablish limits on the control of any derivatives clearing or-
19 ganization that clears swaps, or swap execution facility or
20 board of trade designated as a contract market that posts
21 swaps or makes swaps available for trading, by a bank
22 holding company (as defined in section 2 of the Bank
23 Holding Company Act of 1956 (12 U.S.C. 1841)) with
24 total consolidated assets of \$50,000,000,000 or more, a
25 nonbank financial company (as defined in Section 102 of

1 the Financial Stability Act of 2010) supervised by the
2 Board of Governors of the Federal Reserve System, an
3 affiliate of such a bank holding company or nonbank fi-
4 nancial company, a swap dealer, major swap participant,
5 or associated person of a swap dealer or major swap par-
6 ticipant.

7 (b) PURPOSES.—The Commission shall adopt rules if
8 it determines, after the review described in subsection (a),
9 that such rules are necessary or appropriate to improve
10 the governance of, or to mitigate systemic risk, promote
11 competition, or mitigate conflicts of interest in connection
12 with a swap dealer or major swap participant’s conduct
13 of business with, a derivatives clearing organization, con-
14 tract market, or swap execution facility that clears or
15 posts swaps or makes swaps available for trading and in
16 which such swap dealer or major swap participant has a
17 material debt or equity investment.

18 **SEC. 117. PUBLIC REPORTING OF SWAP TRANSACTION**

19 **DATA.**

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

23 “(13) PUBLIC AVAILABILITY OF SWAP TRANS-
24 ACTION DATA.—

1 “(A) DEFINITION OF REAL-TIME PUBLIC
2 REPORTING.—In this paragraph, the term ‘real-
3 time public reporting’ means to report data re-
4 lating to a swap transaction as soon as techno-
5 logically practicable after the time at which the
6 swap transaction has been executed.

7 “(B) PURPOSE.—The purpose of this sec-
8 tion is to authorize the Commission to make
9 swap transaction and pricing data available to
10 the public in such form and at such times as
11 the Commission determines appropriate to en-
12 hance price discovery.

13 “(C) GENERAL RULE.—The Commission is
14 authorized and required to provide by rule for
15 the public availability of swap transaction and
16 pricing data as follows:

17 “(i) With respect to those swaps that
18 are subject to the mandatory clearing re-
19 quirement described in subsection (h)(2)
20 (including those swaps that are exempted
21 from the requirement pursuant to sub-
22 section (h)(3)), the Commission shall re-
23 quire real-time public reporting for such
24 transactions.

1 “(ii) With respect to those swaps that
2 are not subject to the mandatory clearing
3 requirement described in subsection (h)(2),
4 but are cleared at a registered derivatives
5 clearing organization, the Commission
6 shall require real-time public reporting for
7 such transactions.

8 “(iii) With respect to swaps that are
9 not cleared at a registered derivatives
10 clearing organization and which are re-
11 ported to a swap data repository or the
12 Commission under subsection (h), the
13 Commission shall make available to the
14 public, in a manner that does not disclose
15 the business transactions and market posi-
16 tions of any person, aggregate data on
17 such swap trading volumes and positions.

18 “(D) REGISTERED ENTITIES AND PUBLIC
19 REPORTING.—The Commission may require
20 registered entities to publicly disseminate the
21 swap transaction and pricing data required to
22 be reported under this paragraph.

23 “(E) RULEMAKING REQUIRED.—With re-
24 spect to the rule providing for the public avail-
25 ability of transaction and pricing data for

1 swaps described in clauses (i) and (ii) of sub-
2 paragraph (C), the rule promulgated by the
3 Commission shall contain provisions—

4 “(i) to ensure such information does
5 not identify the participants;

6 “(ii) to specify the criteria for deter-
7 mining what constitutes a large notional
8 swap transaction (block trade) for par-
9 ticular markets and contracts;

10 “(iii) to specify the appropriate time
11 delay for reporting large notional swap
12 transactions (block trades) to the public;
13 and

14 “(iv) that take into account whether
15 the public disclosure will materially reduce
16 market liquidity.

17 “(F) TIMELINESS OF REPORTING.—Par-
18 ties to a swap (including agents of the parties
19 to a swap) shall be responsible for reporting
20 swap transaction information to the appropriate
21 registered entity in a timely manner as may be
22 prescribed by the Commission.

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

1 “(A) IN GENERAL.—In accordance with
2 subparagraph (B), the Commission shall issue a
3 written report on a semiannual and annual
4 basis to make available to the public informa-
5 tion relating to—

6 “(i) the trading and clearing in the
7 major swap categories; and

8 “(ii) the market participants and de-
9 velopments in new products.

10 “(B) USE; CONSULTATION.—In preparing
11 a report under subparagraph (A), the Commis-
12 sion shall—

13 “(i) use information from swap data
14 repositories and derivatives clearing orga-
15 nizations; and

16 “(ii) consult with the Office of the
17 Comptroller of the Currency, the Bank for
18 International Settlements, and such other
19 regulatory bodies as may be necessary.”.

20 **SEC. 118. SWAP DATA REPOSITORIES.**

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

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

24 “(a) REGISTRATION REQUIREMENT.—

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

6 “(2) INSPECTION AND EXAMINATION.—Each
7 registered swap data repository shall be subject to
8 inspection and examination by any representative of
9 the Commission.

10 “(3) COMPLIANCE WITH CORE PRINCIPLES.—

11 “(A) IN GENERAL.—To be registered, and
12 maintain registration, as a swap data reposi-
13 tory, the swap data repository shall comply
14 with—

15 “(i) the core principles described in
16 this subsection; and

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

20 “(B) REASONABLE DISCRETION OF SWAP
21 DATA REPOSITORY.—Unless otherwise deter-
22 mined by the Commission by rule or regulation,
23 a swap data repository described in subpara-
24 graph (A) shall have reasonable discretion in
25 establishing the manner in which the swap data

1 repository complies with the core principles de-
2 scribed in this subsection.

3 “(b) STANDARD SETTING.—

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

8 “(2) DATA COLLECTION AND MAINTENANCE.—
9 The Commission shall prescribe data collection and
10 data maintenance standards for swap data reposi-
11 tories.

12 “(3) COMPARABILITY.—The standards pre-
13 scribed by the Commission under this subsection
14 shall be comparable to the data standards imposed
15 by the Commission on derivatives clearing organiza-
16 tions in connection with their clearing of swaps.

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

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

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

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

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

4 “(B) provide the information described in para-
5 graph (1) in such form and at such frequency as the
6 Commission may require to comply with the public
7 reporting requirements contained in section
8 2(a)(13);

9 “(5) at the direction of the Commission, estab-
10 lish automated systems for monitoring, screening,
11 and analyzing swap data, including compliance and
12 frequency of end user clearing exemption claims by
13 individual and affiliated entities;

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

18 “(7) on a confidential basis pursuant to section
19 8, upon request, and after notifying the Commission
20 of the request, make available all data obtained by
21 the swap data repository, including individual
22 counterparty trade and position data, to—

23 “(A) each appropriate prudential regulator;

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

1 “(C) the Securities and Exchange Commis-
2 sion;

3 “(D) the Department of Justice; and

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

6 “(i) foreign financial supervisors (in-
7 cluding foreign futures authorities);

8 “(ii) foreign central banks;

9 “(iii) foreign ministries; and

10 “(8) establish and maintain emergency proce-
11 dures, backup facilities, and a plan for disaster re-
12 covery that allows for the timely recovery and re-
13 sumption of operations and the fulfillment of the re-
14 sponsibilities and obligations of the organization.

15 “(d) CONFIDENTIALITY AND INDEMNIFICATION
16 AGREEMENT.—Before the swap data repository may share
17 information with any entity described above—

18 “(1) the swap data repository shall receive a
19 written agreement from each entity stating that the
20 entity shall abide by the confidentiality requirements
21 described in section 8 relating to the information on
22 swap transactions that is provided; and

23 “(2) each entity shall agree to indemnify the
24 swap data repository and the Commission for any

1 expenses arising from litigation relating to the infor-
2 mation provided under section 8.

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

5 “(1) IN GENERAL.—Each swap data repository
6 shall designate an individual to serve as a chief com-
7 pliance officer.

8 “(2) DUTIES.—The chief compliance officer
9 shall—

10 “(A) report directly to the board or to the
11 senior officer of the swap data repository;

12 “(B) review the compliance of the swap
13 data repository with respect to the core prin-
14 ciples described in subsection (f);

15 “(C) in consultation with the board of the
16 swap data repository, a body performing a func-
17 tion similar to the board of the swap data re-
18 pository, or the senior officer of the swap data
19 repository, resolve any conflicts of interest that
20 may arise;

21 “(D) be responsible for administering each
22 policy and procedure that is required to be es-
23 tablished pursuant to this section;

24 “(E) ensure compliance with this Act (in-
25 cluding regulations) relating to agreements,

1 contracts, or transactions, including each rule
2 prescribed by the Commission under this sec-
3 tion;

4 “(F) establish procedures for the remedi-
5 ation of noncompliance issues identified by the
6 chief compliance officer through any—

7 “(i) compliance office review;

8 “(ii) look-back;

9 “(iii) internal or external audit find-
10 ing;

11 “(iv) self-reported error; or

12 “(v) validated complaint; and

13 “(G) establish and follow appropriate pro-
14 cedures for the handling, management response,
15 remediation, retesting, and closing of non-
16 compliance issues.

17 “(3) ANNUAL REPORTS.—

18 “(A) IN GENERAL.—In accordance with
19 rules prescribed by the Commission, the chief
20 compliance officer shall annually prepare and
21 sign a report that contains a description of—

22 “(i) the compliance of the swap data
23 repository of the chief compliance officer
24 with respect to this Act (including regula-
25 tions); and

1 “(ii) each policy and procedure of the
2 swap data repository of the chief compli-
3 ance officer (including the code of ethics
4 and conflict of interest policies of the swap
5 data repository).

6 “(B) REQUIREMENTS.—A compliance re-
7 port under subparagraph (A) shall—

8 “(i) accompany each appropriate fi-
9 nancial report of the swap data repository
10 that is required to be furnished to the
11 Commission pursuant to this section; and

12 “(ii) include a certification that, under
13 penalty of law, the compliance report is ac-
14 curate and complete.

15 “(f) CORE PRINCIPLES APPLICABLE TO SWAP DATA
16 REPOSITORIES.—

17 “(1) ANTITRUST CONSIDERATIONS.—Unless
18 specifically reviewed and approved by the Commis-
19 sion for antitrust purposes, a swap data repository
20 may not—

21 “(A) adopt any rule or take any action
22 that results in any unreasonable restraint of
23 trade; or

1 “(B) impose any material anticompetitive
2 burden on the trading, clearing, or reporting of
3 transactions.

4 “(2) GOVERNANCE ARRANGEMENTS.—Each
5 swap data repository shall establish governance ar-
6 rangements that are transparent—

7 “(A) to fulfill public interest requirements;
8 and

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

11 “(3) CONFLICTS OF INTEREST.—Each swap
12 data repository shall—

13 “(A) establish and enforce rules to mini-
14 mize conflicts of interest in the decisionmaking
15 process of the swap data repository; and

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

18 “(g) REQUIRED REGISTRATION FOR SWAP DATA RE-
19 POSITORIES.—Any person that is required to be registered
20 as a swap data repository under this section shall register
21 with the Commission regardless of whether that person is
22 also licensed as a bank or registered with the Securities
23 and Exchange Commission as a swap data repository.

24 “(h) RULES.—The Commission shall adopt rules gov-
25 erning persons that are registered under this section.”.

1 **SEC. 119. REPORTING AND RECORDKEEPING.**

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

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

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

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

11 **“(A)** a swap data repository described in
12 section 21; or

13 **“(B)** in the case in which there is no swap
14 data repository that would accept the swap, to
15 the Commission pursuant to this section within
16 such time period as the Commission may by
17 rule or regulation prescribe.

18 **“(2) TRANSITION RULE FOR PREENACTMENT**
19 **SWAPS.—**

20 **“(A) SWAPS ENTERED INTO BEFORE THE**
21 **DATE OF ENACTMENT OF THE WALL STREET**
22 **TRANSPARENCY AND ACCOUNTABILITY ACT OF**
23 **2010.—**Each swap entered into before the date
24 of enactment of the Wall Street Transparency
25 and Accountability Act of 2010, the terms of
26 which have not expired as of the date of enact-

1 ment of that Act, shall be reported to a reg-
2 istered swap data repository or the Commission
3 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 swap entered into before the date of enactment
13 as referenced in subparagraph (A).

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

17 “(3) REPORTING OBLIGATIONS.—

18 “(A) SWAPS IN WHICH ONLY 1
19 COUNTERPARTY IS A SWAP DEALER OR MAJOR
20 SWAP PARTICIPANT.—With respect to a swap in
21 which only 1 counterparty is a swap dealer or
22 major swap participant, the swap dealer or
23 major swap participant shall report the swap as
24 required under paragraphs (1) and (2).

1 “(B) SWAPS IN WHICH 1 COUNTERPARTY
2 IS A SWAP DEALER AND THE OTHER A MAJOR
3 SWAP PARTICIPANT.—With respect to a swap in
4 which 1 counterparty is a swap dealer and the
5 other a major swap participant, the swap dealer
6 shall report the swap as required under para-
7 graphs (1) and (2).

8 “(C) OTHER SWAPS.—With respect to any
9 other swap not described in subparagraph (A)
10 or (B), the counterparties to the swap shall se-
11 lect a counterparty to report the swap as re-
12 quired under paragraphs (1) and (2).

13 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
14 vidual or entity that enters into a swap shall meet each
15 requirement described in subsection (c) if the individual
16 or entity did not—

17 “(1) clear the swap in accordance with section
18 2(h)(1); or

19 “(2) have the data regarding the swap accepted
20 by a swap data repository in accordance with rules
21 (including timeframes) adopted by the Commission
22 under section 21.

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

1 “(1) upon written request from the Commis-
2 sion, provide reports regarding the swaps held by the
3 individual or entity to the Commission in such form
4 and in such manner as the Commission may request;
5 and

6 “(2) maintain books and records pertaining to
7 the swaps held by the individual or entity in such
8 form, in such manner, and for such period as the
9 Commission may require, which shall be open to in-
10 spection by—

11 “(A) any representative of the Commis-
12 sion;

13 “(B) an appropriate prudential regulator;

14 “(C) the Securities and Exchange Commis-
15 sion;

16 “(D) the Financial Services Oversight
17 Council; and

18 “(E) the Department of Justice.

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

1 **SEC. 120. LARGE SWAP TRADER REPORTING.**

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

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

6 “(a) PROHIBITION.—

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

12 “(A) the person directly or indirectly en-
13 ters into the swap during any 1 day in an
14 amount equal to or in excess of such amount as
15 shall be established periodically by the Commis-
16 sion; and

17 “(B) the person directly or indirectly has
18 or obtains a position in the swap equal to or in
19 excess of such amount as shall be established
20 periodically by the Commission.

21 “(2) EXCEPTION.—Paragraph (1) shall not
22 apply if—

23 “(A) the person files or causes to be filed
24 with the properly designated officer of the Com-
25 mission such reports regarding any transactions
26 or positions described in subparagraphs (A) and

1 (B) of paragraph (1) as the Commission may
2 require by rule or regulation; and

3 “(B) in accordance with the rules and reg-
4 ulations of the Commission, the person keeps
5 books and records of all such swaps and any
6 transactions and positions in any related com-
7 modity traded on or subject to the rules of any
8 board of trade, and of cash or spot transactions
9 in, inventories of, and purchase and sale com-
10 mitments of, such a commodity.

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

13 “(1) show such complete details concerning all
14 transactions and positions as the Commission may
15 prescribe by rule or regulation; and

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

18 “(c) APPLICABILITY.—For purposes of this section,
19 the swaps, futures, and cash or spot transactions and posi-
20 tions of any person shall include the swaps, futures, and
21 cash or spot transactions and positions of any persons di-
22 rectly or indirectly controlled by the person.

23 “(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—
24 In making a determination as to whether a swap performs
25 or affects a significant price discovery function with re-

1 spect to registered entities, the Commission shall consider
2 the factors described in section 4a(a)(3).”.

3 **SEC. 121. REGISTRATION AND REGULATION OF SWAP DEAL-**
4 **ERS AND MAJOR SWAP PARTICIPANTS.**

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

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

10 “(a) REGISTRATION.—

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

14 “(2) MAJOR SWAP PARTICIPANTS.—It shall be
15 unlawful for any person to act as a major swap par-
16 ticipant unless the person is registered as a major
17 swap participant with the Commission.

18 “(b) REQUIREMENTS.—

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

22 “(2) CONTENTS.—

23 “(A) IN GENERAL.—The application shall
24 be made in such form and manner as prescribed
25 by the Commission, and shall contain such in-

1 formation, as the Commission considers nec-
2 essary concerning the business in which the ap-
3 plicant is or will be engaged.

4 “(B) CONTINUAL REPORTING.—A person
5 that is registered as a swap dealer or major
6 swap participant shall continue to submit to the
7 Commission reports that contain such informa-
8 tion pertaining to the business of the person as
9 the Commission may require.

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

13 “(4) RULES.—Except as provided in sub-
14 sections (c), (e), and (f), the Commission may pre-
15 scribe rules applicable to swap dealers and major
16 swap participants, including rules that limit the ac-
17 tivities of swap dealers and major swap participants.

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

23 “(6) STATUTORY DISQUALIFICATION.—Except
24 to the extent otherwise specifically provided by rule,
25 regulation, or order, it shall be unlawful for a swap

1 dealer or a major swap participant to permit any
2 person associated with a swap dealer or a major
3 swap participant who is subject to a statutory dis-
4 qualification to effect or be involved in effecting
5 swaps on behalf of the swap dealer or major swap
6 participant, if the swap dealer or major swap partici-
7 pant knew, or in the exercise of reasonable care
8 should have known, of the statutory disqualification.

9 “(c) DUAL REGISTRATION.—

10 “(1) SWAP DEALER.—Any person that is re-
11 quired to be registered as a swap dealer under this
12 section shall register with the Commission regardless
13 of whether the person also is a bank or is registered
14 with the Securities and Exchange Commission as a
15 security-based swap dealer.

16 “(2) MAJOR SWAP PARTICIPANT.—Any person
17 that is required to be registered as a major swap
18 participant under this section shall register with the
19 Commission regardless of whether the person also is
20 a bank or is registered with the Securities and Ex-
21 change Commission as a major security-based swap
22 participant.

23 “(d) RULEMAKINGS.—

24 “(1) IN GENERAL.—The Commission shall
25 adopt rules for persons that are registered as swap

1 dealers or major swap participants under this sec-
2 tion.

3 “(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
4 MENTS.—

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

9 “(B) APPLICABILITY.—Subparagraph (A)
10 does not limit the authority of the Commission
11 to prescribe appropriate business conduct, re-
12 porting, and recordkeeping requirements to pro-
13 tect investors.

14 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

15 “(1) GENERAL REQUIREMENTS.—

16 “(A) BANK SWAP DEALERS AND MAJOR
17 SWAP PARTICIPANTS.—Each registered swap
18 dealer and major swap participant for which
19 there is a prudential regulator shall meet such
20 minimum capital requirements and minimum
21 initial and variation margin requirements, in-
22 cluding the use of non cash collateral, as the
23 prudential regulators shall jointly prescribe by
24 rule or regulation that—

1 “(i) help ensure the safety and sound-
2 ness of the swap dealer and the major
3 swap participant; and

4 “(ii) are appropriate for the risk asso-
5 ciated with the uncleared swaps held as a
6 swap dealer or major swap participant and
7 the prudential regulators shall require sig-
8 nificantly higher capital for swaps that are
9 uncleared versus similar swaps that are
10 cleared through a derivatives clearing orga-
11 nization.

12 “(B) NONBANK SWAP DEALERS AND
13 MAJOR SWAP PARTICIPANTS.—Each registered
14 swap dealer and major swap participant for
15 which there is not a prudential regulator shall
16 meet such minimum capital requirements and
17 minimum initial and variation margin require-
18 ments, including the use of non cash collateral,
19 as the Commission shall prescribe by rule or
20 regulation that—

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

24 “(ii) are appropriate for the risk asso-
25 ciated with the uncleared swaps held as a

1 swap dealer or major swap participant and
2 the regulators shall require significantly
3 higher capital for swaps that are uncleared
4 versus similar swaps that are cleared
5 through a derivatives clearing organization.

6 “(C) APPLICABILITY WITH RESPECT TO
7 COUNTERPARTIES.—Subparagraphs (A) and
8 (B) shall not apply to initial and variation mar-
9 gin for swaps in which 1 of the counterparties
10 is not—

11 “(i) a swap dealer;

12 “(ii) a major swap participant; or

13 “(iii) a financial entity as described in
14 section 2(h)(3)(A)(ii), and such
15 counterparty is eligible for and utilizing
16 the commercial end user clearing exemp-
17 tion under section 2(h)(3).

18 “(2) COMPARABILITY OF CAPITAL AND MARGIN
19 REQUIREMENTS.—

20 “(A) IN GENERAL.—The prudential regu-
21 lators, the Commission, and the Securities and
22 Exchange Commission shall periodically (but
23 not less frequently than annually) consult on
24 minimum capital requirements and minimum
25 initial and variation margin requirements.

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

8 “(i) swap dealers; and

9 “(ii) major swap participants.

10 “(3) RULEMAKINGS.—

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

21 “(B) NONBANK SWAP DEALERS AND
22 MAJOR SWAP PARTICIPANTS.—The Commission,
23 in consultation with prudential regulators, shall
24 adopt rules imposing capital and margin re-
25 quirements under this subsection for swap deal-

1 ers and major swap participants for which there
2 is no prudential regulator.

3 “(f) REPORTING AND RECORDKEEPING.—

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

6 “(A) shall make such reports as are re-
7 quired by the Commission by rule or regulation
8 regarding the transactions and positions and fi-
9 nancial condition of the registered swap dealer
10 or major swap participant;

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

18 “(ii) for which there is no prudential regu-
19 lator, shall keep books and records in such form
20 and manner and for such period as may be pre-
21 scribed by the Commission by rule or regula-
22 tion; and

23 “(C) shall keep books and records de-
24 scribed in subparagraph (B) open to inspection

1 and examination by any representative of the
2 Commission.

3 “(2) RULES.—The Commission shall adopt
4 rules governing reporting and recordkeeping for
5 swap dealers and major swap participants.

6 “(g) DAILY TRADING RECORDS.—

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

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

19 “(3) COUNTERPARTY RECORDS.—Each reg-
20 istered swap dealer and major swap participant shall
21 maintain daily trading records for each counterparty
22 in a manner and form that is identifiable with each
23 swap transaction.

24 “(4) AUDIT TRAIL.—Each registered swap deal-
25 er and major swap participant shall maintain a com-

1 plete audit trail for conducting comprehensive and
2 accurate trade reconstructions.

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

6 “(h) BUSINESS CONDUCT STANDARDS.—

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

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

15 “(B) diligent supervision of the business of
16 the registered swap dealer and major swap par-
17 ticipant;

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

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

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

24 “(A) GOVERNMENTAL ENTITIES.—A swap
25 dealer that provides advice regarding, or offers

1 to enter into, or enters into a swap with a
2 State, State agency, city, county, municipality,
3 or other political subdivision or a Federal agen-
4 cy shall have a fiduciary duty to the State,
5 State agency, city, county, municipality, or
6 other political subdivision, or the Federal agen-
7 cy as appropriate.

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

15 “(3) BUSINESS CONDUCT REQUIREMENTS.—
16 Business conduct requirements adopted by the Com-
17 mission shall—

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

22 “(B) require disclosure by the swap dealer
23 or major swap participant to any counterparty
24 to the transaction (other than a swap dealer,
25 major swap participant, security-based swap

1 dealer, or major security-based swap partici-
2 pant) of—

3 “(i) information about the material
4 risks and characteristics of the swap;

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

10 “(iii) any other material incentives or
11 conflicts of interest that the swap dealer or
12 major swap participant may have in con-
13 nection with the swap; and

14 “(iv)(I) for cleared swaps, upon the
15 request of the counterparty, the daily mark
16 from the appropriate derivatives clearing
17 organization; and

18 “(II) for uncleared swaps, the daily
19 mark of the swap dealer or the major swap
20 participant; and

21 “(C) establish such other standards and
22 requirements as the Commission may determine
23 are appropriate in the public interest, for the
24 protection of investors, or otherwise in further-
25 ance of the purposes of this Act.

1 “(4) RULES.—The Commission shall prescribe
2 rules under this subsection governing business con-
3 duct standards for swap dealers and major swap
4 participants.

5 “(i) DOCUMENTATION AND BACK OFFICE STAND-
6 ARDS.—

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

13 “(2) RULES.—The Commission shall adopt
14 rules governing documentation and back office
15 standards for swap dealers and major swap partici-
16 pants.

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

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

24 “(2) RISK MANAGEMENT PROCEDURES.—The
25 swap dealer or major swap participant shall estab-

1 lish robust and professional risk management sys-
2 tems adequate for managing the day-to-day business
3 of the swap dealer or major swap participant.

4 “(3) DISCLOSURE OF GENERAL INFORMA-
5 TION.—The swap dealer or major swap participant
6 shall disclose to the Commission and to the pruden-
7 tial regulator for the swap dealer or major swap par-
8 ticipant, as applicable, information concerning—

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

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

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

14 “(D) other information relevant to its trad-
15 ing in swaps.

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

18 “(A) establish and enforce internal systems
19 and procedures to obtain any necessary infor-
20 mation to perform any of the functions de-
21 scribed in this section; and

22 “(B) provide the information to the Com-
23 mission and to the prudential regulator for the
24 swap dealer or major swap participant, as ap-
25 plicable, on request.

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

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

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

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

1 “(A) adopt any process or take any action
2 that results in any unreasonable restraint of
3 trade; or

4 “(B) impose any material anticompetitive
5 burden on trading or clearing.

6 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
7 CER.—

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

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

13 “(A) report directly to the board or to the
14 senior officer of the swap dealer or major swap
15 participant;

16 “(B) review the compliance of the swap
17 dealer or major swap participant with respect to
18 the swap dealer and major swap participant re-
19 quirements described in this section;

20 “(C) in consultation with the board of di-
21 rectors, a body performing a function similar to
22 the board, or the senior officer of the organiza-
23 tion, resolve any conflicts of interest that may
24 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 swaps, including
6 each rule prescribed by the Commission under
7 this section;

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 swap dealer
2 or major swap participant with respect to
3 this Act (including regulations); and

4 “(ii) each policy and procedure of the
5 swap dealer or major swap participant of
6 the chief compliance officer (including the
7 code of ethics and conflict of interest poli-
8 cies).

9 “(B) REQUIREMENTS.—A compliance re-
10 port under subparagraph (A) shall—

11 “(i) accompany each appropriate fi-
12 nancial report of the swap dealer or major
13 swap participant that is required to be fur-
14 nished to the Commission pursuant to this
15 section; and

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

19 **SEC. 122. CONFLICTS OF INTEREST.**

20 Section 4d of the Commodity Exchange Act (7 U.S.C.
21 6d) is amended—

22 (1) by redesignating subsection (c) as sub-
23 section (e); and

24 (2) by inserting after subsection (b) the fol-
25 lowing:

1 “(c) CONFLICTS OF INTEREST.—The Commission
2 shall require that futures commission merchants and in-
3 troducing brokers implement conflict-of-interest systems
4 and procedures that—

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

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

16 “(d) DESIGNATION OF CHIEF COMPLIANCE OFFI-
17 CER.—

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

21 “(2) DUTIES.—The chief compliance officer
22 shall—

23 “(A) report directly to the board or to the
24 senior officer of the futures commission mer-
25 chant;

1 “(B) review the compliance of the futures
2 commission merchant with respect to require-
3 ments described in this section;

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

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

12 “(E) ensure compliance with this Act (in-
13 cluding regulations and each rule prescribed by
14 the Commission under this section) relating,
15 but not limited, to—

16 “(i) contracts of sale of a commodity
17 for future delivery;

18 “(ii) options on the contracts de-
19 scribed in clause (i);

20 “(iii) commodity options;

21 “(iv) retail commodity transactions;

22 “(v) security futures products;

23 “(vi) leverage contracts; and

24 “(vii) swaps;

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 futures
20 commission merchant with respect to this
21 Act (including regulations); and

22 “(ii) each policy and procedure of the
23 futures commission merchant of the chief
24 compliance officer (including the code of
25 ethics and conflict of interest policies).

1 “(B) REQUIREMENTS.—A compliance re-
2 port under subparagraph (A) shall—

3 “(i) accompany each appropriate fi-
4 nancial report of the futures commission
5 merchant that is required to be furnished
6 to the Commission pursuant to this sec-
7 tion; and

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

11 **SEC. 123. SWAP EXECUTION FACILITIES.**

12 The Commodity Exchange Act is amended by insert-
13 ing after section 5g (7 U.S.C. 7b-2) the following:

14 **“SEC. 5h. SWAP EXECUTION FACILITIES.**

15 “(a) REGISTRATION.—

16 “(1) IN GENERAL.—No person may operate a
17 facility for the trading or processing of swaps unless
18 the facility is registered as a swap execution facility
19 or as a designated contract market under this sec-
20 tion.

21 “(2) DUAL REGISTRATION.—Any person that is
22 registered as a swap execution facility under this
23 section shall register with the Commission regardless
24 of whether the person also is registered with the Se-

1 securities and Exchange Commission as a swap execu-
2 tion facility.

3 “(b) TRADING AND TRADE PROCESSING.—A swap
4 execution facility that is registered under subsection (a)
5 may—

6 “(1) make available for trading any swap; and

7 “(2) facilitate trade processing of any swap.

8 “(c) TRADING BY CONTRACT MARKETS.—A board of
9 trade that operates a contract market shall, to the extent
10 that the board of trade also operates a swap execution fa-
11 cility and uses the same electronic trade execution system
12 for trading on the contract market and the swap execution
13 facility, identify whether the electronic trading is taking
14 place on the contract market or the swap execution facil-
15 ity.

16 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
17 CILITIES.—

18 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

19 “(A) IN GENERAL.—To be registered, and
20 maintain registration, as a swap execution facil-
21 ity, the swap execution facility shall comply
22 with—

23 “(i) the core principles described in
24 this subsection; and

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

4 “(B) REASONABLE DISCRETION OF SWAP
5 EXECUTION FACILITY.—Unless otherwise deter-
6 mined by the Commission by rule or regulation,
7 a swap execution facility described in subpara-
8 graph (A) shall have reasonable discretion in
9 establishing the manner in which the swap exe-
10 cution facility complies with the core principles
11 described in this subsection.

12 “(2) COMPLIANCE WITH RULES.—A swap exe-
13 cution facility shall—

14 “(A) monitor and enforce compliance with
15 any rule of the swap execution facility, includ-
16 ing—

17 “(i) the terms and conditions of the
18 swaps traded or processed on or through
19 the swap execution facility; and

20 “(ii) any limitation on access to the
21 swap execution facility;

22 “(B) establish and enforce trading, trade
23 processing, and participation rules that will
24 deter abuses and have the capacity to detect,

1 investigate, and enforce those rules, including
2 means—

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

5 “(ii) to capture information that may
6 be used in establishing whether rule viola-
7 tions have occurred;

8 “(C) establish rules governing the oper-
9 ation of the facility, including rules specifying
10 trading procedures to be used in entering and
11 executing orders traded or posted on the facil-
12 ity, including block trades; and

13 “(D) provide by its rules that when a swap
14 dealer or major swap participant enters into or
15 facilitates a swap that is subject to the manda-
16 tory clearing requirement of section 2(h)(2)(F),
17 the swap dealer or major swap participant shall
18 be responsible for compliance with the manda-
19 tory trading requirement of section 113(d) of
20 the Wall Street Transparency and Account-
21 ability Act of 2010.

22 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
23 NIPULATION.—The swap execution facility shall per-
24 mit trading only in swaps that are not readily sus-
25 ceptible to manipulation.

1 “(4) MONITORING OF TRADING AND TRADE
2 PROCESSING.—The swap execution facility shall—

3 “(A) establish and enforce rules or terms
4 and conditions defining, or specifications detail-
5 ing—

6 “(i) trading procedures to be used in
7 entering and executing orders traded on or
8 through the facilities of the swap execution
9 facility; and

10 “(ii) procedures for trade processing
11 of swaps on or through the facilities of the
12 swap execution facility; and

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

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

23 “(A) establish and enforce rules that will
24 allow the facility to obtain any necessary infor-

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

3 “(B) provide the information to the Com-
4 mission on request; and

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

8 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

9 “(A) IN GENERAL.—To reduce the poten-
10 tial threat of market manipulation or conges-
11 tion, especially during trading in the delivery
12 month, a swap execution facility that is a trad-
13 ing facility shall adopt for each of the contracts
14 of the facility, as is necessary and appropriate,
15 position limitations or position accountability
16 for speculators.

17 “(B) POSITION LIMITS.—For any contract
18 that is subject to a position limitation estab-
19 lished by the Commission pursuant to section
20 4a(a), the swap execution facility shall set its
21 position limitation at a level no higher than the
22 Commission limitation.

23 “(C) POSITION ENFORCEMENT.—For any
24 contract that is subject to a position limitation
25 established by the Commission pursuant to sec-

1 tion 4a(a), a swap execution facility shall reject
2 any proposed swap transaction if, based on in-
3 formation readily available to a swap execution
4 facility, any proposed swap transaction would
5 cause a swap execution facility customer that
6 would be a party to such swap transaction to
7 exceed such position limitation.

8 “(7) FINANCIAL INTEGRITY OF TRANS-
9 ACTIONS.—The swap execution facility shall estab-
10 lish and enforce rules and procedures for ensuring
11 the financial integrity of swaps entered on or
12 through the facilities of the swap execution facility,
13 including the clearance and settlement of the swaps
14 pursuant to section 2(h)(1).

15 “(8) EMERGENCY AUTHORITY.—The swap exe-
16 cution facility shall adopt rules to provide for the ex-
17 ercise of emergency authority, in consultation or co-
18 operation with the Commission, as is necessary and
19 appropriate, including the authority to liquidate or
20 transfer open positions in any swap or to suspend or
21 curtail trading in a swap.

22 “(9) TIMELY PUBLICATION OF TRADING INFOR-
23 MATION.—

24 “(A) IN GENERAL.—The swap execution
25 facility shall make public timely information on

1 price, trading volume, and other trading data
2 on swaps to the extent prescribed by the Com-
3 mission.

4 “(B) CAPACITY OF SWAP EXECUTION FA-
5 CILITY.—The swap execution facility shall be
6 required to have the capacity to electronically
7 capture trade information with respect to trans-
8 actions executed on the facility.

9 “(10) RECORDKEEPING AND REPORTING.—

10 “(A) IN GENERAL.—A swap execution fa-
11 cility shall—

12 “(i) maintain records of all activities
13 relating to the business of the facility, in-
14 cluding a complete audit trail, in a form
15 and manner acceptable to the Commission
16 for a period of 5 years; and

17 “(ii) report to the Commission, in a
18 form and manner acceptable to the Com-
19 mission, such information as the Commis-
20 sion determines to be necessary or appro-
21 priate for the Commission to perform the
22 duties of the Commission under this Act.

23 “(B) REQUIREMENTS.—The Commission
24 shall adopt data collection and reporting re-
25 quirements for swap execution facilities that are

1 comparable to corresponding requirements for
2 derivatives clearing organizations and swap
3 data repositories.

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

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

10 “(B) imposing any material anticompeti-
11 tive burden on trading or clearing.

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

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

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

19 “(13) FINANCIAL RESOURCES.—

20 “(A) IN GENERAL.—The swap execution
21 facility shall have adequate financial, oper-
22 ational, and managerial resources to discharge
23 each responsibility of the swap execution facil-
24 ity.

1 “(B) DETERMINATION OF RESOURCE ADE-
2 QUACY.—The financial resources of a swap exe-
3 cution facility shall be considered to be ade-
4 quate if the value of the financial resources ex-
5 ceeds the total amount that would enable the
6 swap execution facility to cover the operating
7 costs of the swap execution facility for a 1-year
8 period, as calculated on a rolling basis.

9 “(14) SYSTEM SAFEGUARDS.—The swap execu-
10 tion facility shall—

11 “(A) establish and maintain a program of
12 risk analysis and oversight to identify and mini-
13 mize sources of operational risk, through the
14 development of appropriate controls and proce-
15 dures, and automated systems, that—

16 “(i) are reliable and secure; and

17 “(ii) have adequate scalable capacity;

18 “(B) establish and maintain emergency
19 procedures, backup facilities, and a plan for dis-
20 aster recovery that are designed to allow for—

21 “(i) the timely recovery and resump-
22 tion of operations; and

23 “(ii) the fulfillment of the responsibil-
24 ities and obligation of the swap execution
25 facility; and

1 “(C) periodically conduct tests to verify
2 that the backup resources of the swap execution
3 facility are sufficient to ensure continued—

4 “(i) order processing and trade
5 matching;

6 “(ii) price reporting;

7 “(iii) market surveillance and

8 “(iv) maintenance of a comprehensive
9 and accurate audit trail.

10 “(15) DESIGNATION OF CHIEF COMPLIANCE
11 OFFICER.—

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

15 “(B) DUTIES.—The chief compliance offi-
16 cer shall—

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

19 “(ii) review compliance with the core
20 principles in this subsection;

21 “(iii) in consultation with the board of
22 the facility, a body performing a function
23 similar to that of a board, or the senior of-
24 ficer of the facility, resolve any conflicts of
25 interest that may arise;

1 “(iv) be responsible for establishing
2 and administering the policies and proce-
3 dures required to be established pursuant
4 to this section;

5 “(v) ensure compliance with this Act
6 and the rules and regulations issued under
7 this Act, including rules prescribed by the
8 Commission pursuant to this section; and

9 “(vi) establish procedures for the re-
10 mediation of noncompliance issues found
11 during compliance office reviews, look
12 backs, internal or external audit findings,
13 self-reported errors, or through validated
14 complaints.

15 “(C) REQUIREMENTS FOR PROCEDURES.—
16 In establishing procedures under subparagraph
17 (B)(vi), the chief compliance officer shall design
18 the procedures to establish the handling, man-
19 agement response, remediation, retesting, and
20 closing of noncompliance issues.

21 “(D) ANNUAL REPORTS.—

22 “(i) IN GENERAL.—In accordance
23 with rules prescribed by the Commission,
24 the chief compliance officer shall annually

1 prepare and sign a report that contains a
2 description of—

3 “(I) the compliance of the swap
4 execution facility with this Act; and

5 “(II) the policies and procedures,
6 including the code of ethics and con-
7 flict of interest policies, of the swap
8 execution facility.

9 “(ii) REQUIREMENTS.—The chief
10 compliance officer shall—

11 “(I) submit each report described
12 in clause (i) with the appropriate fi-
13 nancial report of the swap execution
14 facility that is required to be sub-
15 mitted to the Commission pursuant to
16 this section; and

17 “(II) include in the report a cer-
18 tification that, under penalty of law,
19 the report is accurate and complete.

20 “(e) EXEMPTIONS.—The Commission may exempt,
21 conditionally or unconditionally, a swap execution facility
22 from registration under this section if the Commission
23 finds that the facility is subject to comparable, comprehen-
24 sive supervision and regulation on a consolidated basis by
25 the Securities and Exchange Commission, a prudential

1 regulator, or the appropriate governmental authorities in
2 the home country of the facility.

3 “(f) RULES.—The Commission shall prescribe rules
4 governing the regulation of alternative swap execution fa-
5 cilities under this section.”

6 **SEC. 124. DERIVATIVES TRANSACTION EXECUTION FACILI-**
7 **TIES AND EXEMPT BOARDS OF TRADE.**

8 (a) IN GENERAL.—Sections 5a and 5d of the Com-
9 modity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 2 of the Commodity Exchange Act
12 (7 U.S.C. 2) is amended—

13 (A) in subsection (a)(1)(A), in the first
14 sentence, by striking “or 5a”; and

15 (B) in paragraph (2) of subsection (g) (as
16 redesignated by section 113(a)(1)(B)), by strik-
17 ing “section 5a of this Act” and all that follows
18 through “5d of this Act” and inserting “section
19 5b of this Act”.

20 (2) Section 6(g)(1)(A) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is
22 amended—

23 (A) by striking “that—” and all that fol-
24 lows through “(i) has been designated” and in-
25 serting “that has been designated”;

1 (B) by striking “; or” and inserting “;
2 and” and

3 (C) by striking clause (ii).

4 **SEC. 125. DESIGNATED CONTRACT MARKETS.**

5 (a) CRITERIA FOR DESIGNATION.—Section 5 of the
6 Commodity Exchange Act (7 U.S.C. 7) is amended by
7 striking subsection (b).

8 (b) CORE PRINCIPLES FOR CONTRACT MARKETS.—
9 Section 5 of the Commodity Exchange Act (7 U.S.C. 7)
10 is amended by striking subsection (d) and inserting the
11 following:

12 “(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

13 “(1) DESIGNATION AS CONTRACT MARKET.—

14 “(A) IN GENERAL.—To be designated, and
15 maintain a designation, as a contract market, a
16 board of trade shall comply with—

17 “(i) any core principle described in
18 this subsection; and

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

22 “(B) REASONABLE DISCRETION OF CON-
23 TRACT MARKET.—Unless otherwise determined
24 by the Commission by rule or regulation, a
25 board of trade described in subparagraph (A)

1 shall have reasonable discretion in establishing
2 the manner in which the board of trade com-
3 plies with the core principles described in this
4 subsection.

5 “(2) COMPLIANCE WITH RULES.—

6 “(A) IN GENERAL.—The board of trade
7 shall establish, monitor, and enforce compliance
8 with the rules of the contract market, includ-
9 ing—

10 “(i) access requirements;

11 “(ii) the terms and conditions of any
12 contracts to be traded on the contract mar-
13 ket; and

14 “(iii) rules prohibiting abusive trade
15 practices on the contract market.

16 “(B) CAPACITY OF CONTRACT MARKET.—

17 The board of trade shall have the capacity to
18 detect, investigate, and apply appropriate sanc-
19 tions to any person that violates any rule of the
20 contract market.

21 “(C) REQUIREMENT OF RULES.—The rules
22 of the contract market shall provide the board
23 of trade with the ability and authority to obtain
24 any necessary information to perform any func-
25 tion described in this subsection, including the

1 capacity to carry out such international infor-
2 mation-sharing agreements as the Commission
3 may require.

4 “(3) CONTRACTS NOT READILY SUBJECT TO
5 MANIPULATION.—The board of trade shall list on
6 the contract market only contracts that are not
7 readily susceptible to manipulation.

8 “(4) PREVENTION OF MARKET DISRUPTION.—
9 The board of trade shall have the capacity and re-
10 sponsibility to prevent manipulation, price distortion,
11 and disruptions of the delivery or cash-settlement
12 process through market surveillance, compliance,
13 and enforcement practices and procedures, includ-
14 ing—

15 “(A) methods for conducting real-time
16 monitoring of trading; and

17 “(B) comprehensive and accurate trade re-
18 constructions.

19 “(5) POSITION LIMITATIONS OR ACCOUNT-
20 ABILITY.—

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 board of trade shall adopt for each
25 contract of the board of trade, as is necessary

1 and appropriate, position limitations or position
2 accountability for speculators.

3 “(B) MAXIMUM ALLOWABLE POSITION
4 LIMITATION.—For any contract that is subject
5 to a position limitation established by the Com-
6 mission pursuant to section 4a(a), the board of
7 trade shall set the position limitation of the
8 board of trade at a level not higher than the po-
9 sition limitation established by the Commission.

10 “(6) EMERGENCY AUTHORITY.—The board of
11 trade, in consultation or cooperation with the Com-
12 mission, shall adopt rules to provide for the exercise
13 of emergency authority, as is necessary and appro-
14 priate, including the authority—

15 “(A) to liquidate or transfer open positions
16 in any contract;

17 “(B) to suspend or curtail trading in any
18 contract; and

19 “(C) to require market participants in any
20 contract to meet special margin requirements.

21 “(7) AVAILABILITY OF GENERAL INFORMA-
22 TION.—The board of trade shall make available to
23 market authorities, market participants, and the
24 public accurate information concerning—

1 “(ii) an exchange of—

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

4 “(II) futures for cash commod-
5 ities; or

6 “(III) futures for swaps; or

7 “(iii) a futures commission merchant,
8 acting as principal or agent, to enter into
9 or confirm the execution of a contract for
10 the purchase or sale of a commodity for fu-
11 ture delivery if the contract is reported, re-
12 corded, or cleared in accordance with the
13 rules of the contract market or a deriva-
14 tives clearing organization.

15 “(10) TRADE INFORMATION.—The board of
16 trade shall maintain rules and procedures to provide
17 for the recording and safe storage of all identifying
18 trade information in a manner that enables the con-
19 tract market to use the information—

20 “(A) to assist in the prevention of cus-
21 tomer and market abuses; and

22 “(B) to provide evidence of any violations
23 of the rules of the contract market.

1 “(11) FINANCIAL INTEGRITY OF TRANS-
2 ACTIONS.—The board of trade shall establish and
3 enforce—

4 “(A) rules and procedures for ensuring the
5 financial integrity of transactions entered into
6 on or through the facilities of the contract mar-
7 ket (including the clearance and settlement of
8 the transactions with a derivatives clearing or-
9 ganization); and

10 “(B) rules to ensure—

11 “(i) the financial integrity of any—

12 “(I) futures commission mer-
13 chant; and

14 “(II) introducing broker; and

15 “(ii) the protection of customer funds.

16 “(12) PROTECTION OF MARKETS AND MARKET
17 PARTICIPANTS.—The board of trade shall establish
18 and enforce rules—

19 “(A) to protect markets and market par-
20 ticipants from abusive practices committed by
21 any party, including abusive practices com-
22 mitted by a party acting as an agent for a par-
23 ticipant; and

24 “(B) to promote fair and equitable trading
25 on the contract market.

1 “(13) DISCIPLINARY PROCEDURES.—The board
2 of trade shall establish and enforce disciplinary pro-
3 cedures that authorize the board of trade to dis-
4 cipline, suspend, or expel members or market par-
5 ticipants that violate the rules of the board of trade,
6 or similar methods for performing the same func-
7 tions, including delegation of the functions to third
8 parties.

9 “(14) DISPUTE RESOLUTION.—The board of
10 trade shall establish and enforce rules regarding,
11 and provide facilities for alternative dispute resolu-
12 tion as appropriate for, market participants and any
13 market intermediaries.

14 “(15) GOVERNANCE FITNESS STANDARDS.—
15 The board of trade shall establish and enforce ap-
16 propriate fitness standards for directors, members of
17 any disciplinary committee, members of the contract
18 market, and any other person with direct access to
19 the facility (including any party affiliated with any
20 person described in this paragraph).

21 “(16) CONFLICTS OF INTEREST.—The board of
22 trade shall establish and enforce rules—

23 “(A) to minimize conflicts of interest in
24 the decisionmaking process of the contract mar-
25 ket; and

1 “(B) to establish a process for resolving
2 conflicts of interest described in subparagraph
3 (A).

4 “(17) COMPOSITION OF GOVERNING BOARDS OF
5 CONTRACT MARKETS.—The governance arrange-
6 ments of the board of trade shall be designed to pro-
7 mote the objectives of market participants.

8 “(18) RECORDKEEPING.—The board of trade
9 shall maintain records of all activities relating to the
10 business of the contract market—

11 “(A) in a form and manner that is accept-
12 able to the Commission; and

13 “(B) for a period of at least 5 years.

14 “(19) ANTITRUST CONSIDERATIONS.—Unless
15 appropriate to achieve the purposes of this Act, the
16 board of trade shall, to the maximum extent prac-
17 ticable, avoid—

18 “(A) adopting any rule or taking any ac-
19 tion that results in any unreasonable restraint
20 of trade; or

21 “(B) imposing any material anticompeti-
22 tive burden on trading on the contract market.

23 “(20) SYSTEM SAFEGUARDS.—The board of
24 trade 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 the development of automated sys-
6 tems, that are reliable, secure, and have ade-
7 quate scalable capacity;

8 “(B) establish and maintain emergency
9 procedures, backup facilities, and a plan for dis-
10 aster recovery that allow for the timely recovery
11 and resumption of operations and the fulfill-
12 ment of the responsibilities and obligations of
13 the board of trade; and

14 “(C) periodically conduct tests to verify
15 that backup resources are sufficient to ensure
16 continued order processing and trade matching,
17 price reporting, market surveillance, and main-
18 tenance of a comprehensive and accurate audit
19 trail.

20 “(21) FINANCIAL RESOURCES.—

21 “(A) IN GENERAL.—The board of trade
22 shall have adequate financial, operational, and
23 managerial resources to discharge each respon-
24 sibility of the board of trade.

1 “(B) DETERMINATION OF ADEQUACY.—
2 The financial resources of the board of trade
3 shall be considered to be adequate if the value
4 of the financial resources exceeds the total
5 amount that would enable the contract market
6 to cover the operating costs of the contract
7 market for a 1-year period, as calculated on a
8 rolling basis.”.

9 **SEC. 126. MARGIN.**

10 Section 8a(7) of the Commodity Exchange Act (7
11 U.S.C. 12a(7)) is amended—

12 (1) in subparagraph (C), by striking “, except-
13 ing the setting of levels of margin”;

14 (2) by redesignating subparagraphs (D)
15 through (F) as subparagraphs (E) through (G), re-
16 spectively; and

17 (3) by inserting after subparagraph (C) the fol-
18 lowing:

19 “(D) margin requirements, provided that
20 the rules, regulations, or orders shall—

21 “(i) be limited to protecting the finan-
22 cial integrity of the derivatives clearing or-
23 ganization;

1 “(ii) be designed for risk management
2 purposes to protect the financial integrity
3 of transactions; and

4 “(iii) not set specific margin
5 amounts;”.

6 **SEC. 127. POSITION LIMITS.**

7 (a) AGGREGATE POSITION LIMITS.—Section 4a(a) of
8 the Commodity Exchange Act (7 U.S.C. 6a(a)) is amend-
9 ed—

10 (1) by inserting after “(a)” the following:

11 “(1) IN GENERAL.—”;

12 (2) in the first sentence, by striking “on elec-
13 tronic trading facilities with respect to a significant
14 price discovery contract” and inserting “swaps that
15 perform or affect a significant price discovery func-
16 tion with respect to registered entities”;

17 (3) in the second sentence—

18 (A) by inserting “, including any group or
19 class of traders,” after “held by any person”;
20 and

21 (B) by striking “on an electronic trading
22 facility with respect to a significant price dis-
23 covery contract,” and inserting “swaps traded
24 on or subject to the rules of an swaps execution
25 facility, or swaps not traded on or subject to

1 the rules of an swaps execution facility that
2 perform a significant price discovery function
3 with respect to a registered entity,”; and

4 (4) by adding at the end the following:

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

13 “(A) contracts listed by designated con-
14 tract markets;

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

1 “(C) swaps traded on or subject to the
2 rules of a swap execution facility; and

3 “(D) swaps not traded on or subject to the
4 rules of a swap execution facility that perform
5 or affect a significant price discovery function
6 with respect to a registered entity.

7 “(3) SIGNIFICANT PRICE DISCOVERY FUNC-
8 TION.—In making a determination as to whether a
9 swap performs or affects a significant price dis-
10 covery function with respect to registered entities,
11 the Commission shall consider, as appropriate, the
12 following factors:

13 “(A) PRICE LINKAGE.—The extent to
14 which the swap uses or otherwise relies on a
15 daily or final settlement price, or other major
16 price parameter, of another contract traded on
17 a registered entity based on the same under-
18 lying commodity, to value a position, transfer or
19 convert a position, financially settle a position,
20 or close out a position.

21 “(B) ARBITRAGE.—The extent to which
22 the price for the swap is sufficiently related to
23 the price of another contract traded on a reg-
24 istered entity based on the same underlying
25 commodity so as to permit market participants

1 to effectively arbitrage between the markets by
2 simultaneously maintaining positions or exe-
3 cuting trades in the swaps on a frequent and
4 recurring basis.

5 “(C) MATERIAL PRICE REFERENCE.—The
6 extent to which, on a frequent and recurring
7 basis, bids, offers, or transactions in a contract
8 traded on a registered entity are directly based
9 on, or are determined by referencing, the price
10 generated by the swap.

11 “(D) MATERIAL LIQUIDITY.—The extent
12 to which the volume of swaps being traded in
13 the commodity is sufficient to have a material
14 effect on another contract traded on a reg-
15 istered entity.

16 “(E) OTHER MATERIAL FACTORS.—Such
17 other material factors as the Commission speci-
18 fies by rule or regulation as relevant to deter-
19 mine whether a swap serves a significant price
20 discovery function with respect to a regulated
21 market.

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

1 of transactions from any requirement that the Com-
2 mission establishes under this section with respect to
3 position limits.”.

4 (b) CONFORMING AMENDMENTS.—Section 4a(b) of
5 the Commodity Exchange Act (7 U.S.C. 6a(b)) is amend-
6 ed—

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

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

15 **SEC. 128. FOREIGN BOARDS OF TRADE.**

16 (a) IN GENERAL.—Section 4(b) of the Commodity
17 Exchange Act (7 U.S.C. 6(b)) is amended—

18 (1) in the first sentence, by striking “The Com-
19 mission” and inserting the following:

20 “(2) PERSONS LOCATED IN THE UNITED
21 STATES.—

22 “(A) IN GENERAL.—The Commission”;

23 (2) in the second sentence, by striking “Such
24 rules and regulations” and inserting the following:

1 “(B) DIFFERENT REQUIREMENTS.—Rules
2 and regulations described in subparagraph
3 (A)”;

4 (3) in the third sentence—

5 (A) by striking “No rule or regulation”
6 and inserting the following:

7 “(C) PROHIBITION.—Except as provided in
8 paragraphs (1) and (2), no rule or regulation”;

9 (B) by striking “that (1) requires” and in-
10 sserting the following: “that—

11 “(i) requires”; and

12 (C) by striking “market, or (2) governs”
13 and inserting the following: “market; or

14 “(ii) governs”; and

15 (4) by inserting before paragraph (2) (as des-
16 ignated by paragraph (1)) the following:

17 “(1) FOREIGN BOARDS OF TRADE.—

18 “(A) IN GENERAL.—It shall be unlawful
19 for a foreign board of trade to provide to the
20 members of the foreign board of trade or other
21 participants located in the United States direct
22 access to the electronic trading and order-
23 matching system of the foreign board of trade
24 with respect to an agreement, contract, or
25 transaction that settles against any price (in-

1 including the daily or final settlement price) of 1
2 or more contracts listed for trading on a reg-
3 istered entity, unless the Commission deter-
4 mines that—

5 “(i) the foreign board of trade makes
6 public daily trading information regarding
7 the agreement, contract, or transaction
8 that is comparable to the daily trading in-
9 formation published by the registered enti-
10 ty for the 1 or more contracts against
11 which the agreement, contract, or trans-
12 action traded on the foreign board of trade
13 settles; and

14 “(ii) the foreign board of trade (or the
15 foreign futures authority that oversees the
16 foreign board of trade)—

17 “(I) adopts position limits (in-
18 cluding related hedge exemption provi-
19 sions) for the agreement, contract, or
20 transaction that are comparable to the
21 position limits (including related
22 hedge exemption provisions) adopted
23 by the registered entity for the 1 or
24 more contracts against which the
25 agreement, contract, or transaction

1 traded on the foreign board of trade
2 settles;

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

14 “(III) agrees to promptly notify
15 the Commission, with regard to the
16 agreement, contract, or transaction
17 that settles against any price (includ-
18 ing the daily or final settlement price)
19 of 1 or more contracts listed for trad-
20 ing on a registered entity, of any
21 change regarding—

22 “(aa) the information that
23 the foreign board of trade will
24 make publicly available;

1 “(bb) the position limits
2 that the foreign board of trade or
3 foreign futures authority will
4 adopt and enforce;

5 “(cc) the position reductions
6 required to prevent manipulation,
7 excessive speculation as described
8 in section 4a, price distortion, or
9 disruption of delivery or the cash
10 settlement process; and

11 “(dd) any other area of in-
12 terest expressed by the Commis-
13 sion to the foreign board of trade
14 or foreign futures authority;

15 “(IV) provides information to the
16 Commission regarding large trader
17 positions in the agreement, contract,
18 or transaction that is comparable to
19 the large trader position information
20 collected by the Commission for the 1
21 or more contracts against which the
22 agreement, contract, or transaction
23 traded on the foreign board of trade
24 settles; and

1 “(V) provides the Commission
2 such information as is necessary to
3 publish reports on aggregate trader
4 positions for the agreement, contract,
5 or transaction traded on the foreign
6 board of trade that are comparable to
7 such reports on aggregate trader posi-
8 tions for the 1 or more contracts
9 against which the agreement, con-
10 tract, or transaction traded on the
11 foreign board of trade settles.

12 “(B) EXISTING FOREIGN BOARDS OF
13 TRADE.—Subparagraph (A) shall not be effec-
14 tive with respect to any foreign board of trade
15 to which, prior to the date of enactment of this
16 paragraph, the Commission granted direct ac-
17 cess permission until the date that is 180 days
18 after that date of enactment.”.

19 (b) LIABILITY OF REGISTERED PERSONS TRADING
20 ON A FOREIGN BOARD OF TRADE.—Section 4 of the Com-
21 modity Exchange Act (7 U.S.C. 6) is amended—

22 (1) in subsection (a), in the matter preceding
23 paragraph (1), by inserting “or by subsection (e)”
24 after “Unless exempted by the Commission pursuant
25 to subsection (c)”; and

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

2 “(e) LIABILITY OF REGISTERED PERSONS TRADING
3 ON A FOREIGN BOARD OF TRADE.—A person registered
4 with the Commission, or exempt from registration by the
5 Commission, under this Act may not be found to have vio-
6 lated subsection (a) with respect to a transaction in, or
7 in connection with, a contract of sale of a commodity for
8 future delivery if the person has reason to believe that the
9 transaction and the contract is made on or subject to the
10 rules of a foreign board of trade that has complied with
11 paragraphs (1) and (2) of subsection (b).”.

12 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
13 TURES CONTRACTS.—Section 22(a) of the Commodity Ex-
14 change Act (7 U.S.C. 25(a)) (as amended by section 129)
15 is amended by adding at the end the following:

16 “(6) CONTRACT ENFORCEMENT FOR FOREIGN
17 FUTURES CONTRACTS.—A contract of sale of a com-
18 modity for future delivery traded or executed on or
19 through the facilities of a board of trade, exchange,
20 or market located outside the United States for pur-
21 poses of section 4(a) shall not be void, voidable, or
22 unenforceable, and a party to such a contract shall
23 not be entitled to rescind or recover any payment
24 made with respect to the contract, based on the fail-

1 ure of the foreign board of trade to comply with any
2 provision of this Act.”.

3 **SEC. 129. LEGAL CERTAINTY FOR SWAPS.**

4 Section 22(a) of the Commodity Exchange Act (7
5 U.S.C. 25(a)) is amended by striking paragraph (4) and
6 inserting the following:

7 “(4) CONTRACT ENFORCEMENT BETWEEN ELI-
8 GIBLE COUNTERPARTIES.—

9 “(A) IN GENERAL.—No hybrid instrument
10 sold to any investor shall be void, voidable, or
11 unenforceable, and no party to a hybrid instru-
12 ment shall be entitled to rescind, or recover any
13 payment made with respect to, the hybrid in-
14 strument under this section or any other provi-
15 sion of Federal or State law, based solely on the
16 failure of the hybrid instrument to comply with
17 the terms or conditions of section 2(f) or regu-
18 lations of the Commission.

19 “(B) SWAPS.—No agreement, contract, or
20 transaction between eligible contract partici-
21 pants or persons reasonably believed to be eligi-
22 ble contract participants shall be void, voidable,
23 or unenforceable, and no party to an agree-
24 ment, contract, or transaction shall be entitled
25 to rescind, or recover any payment made with

1 respect to, the agreement, contract, or trans-
2 action under this section or any other provision
3 of Federal or State law, based solely on the fail-
4 ure of the agreement, contract, or transaction—

5 “(i) to meet the definition of a swap
6 under section 1a; or

7 “(ii) to be cleared in accordance with
8 section 2(h)(1).

9 “(5) LEGAL CERTAINTY FOR LONG-TERM
10 SWAPS ENTERED INTO BEFORE THE DATE OF EN-
11 ACTMENT OF THE WALL STREET TRANSPARENCY
12 AND ACCOUNTABILITY ACT OF 2010.—

13 “(A) IN GENERAL.—Any swap entered into
14 before the date of enactment of the Wall Street
15 Transparency and Accountability Act of 2010,
16 the terms of which have not expired as of the
17 date of enactment, shall not be subject to the
18 mandatory clearing or margin requirements
19 under this Act.

20 “(B) EFFECT ON SWAPS.—Unless specifi-
21 cally reserved in the applicable bilateral trading
22 agreement, neither the enactment of the Wall
23 Street Transparency and Accountability Act of
24 2010, nor any requirement under that Act or
25 an amendment made by that Act, shall con-

1 stitute a termination event, force majeure, ille-
2 gality, increased costs, regulatory change, or
3 similar event under a bilateral trading agree-
4 ment (including any related credit support ar-
5 rangement) that would permit a party to termi-
6 nate, renegotiate, modify, amend, or supple-
7 ment 1 or more transactions under the bilateral
8 trading agreement.

9 “(C) POSITION LIMITS.—Any position limit
10 established under the Wall Street Transparency
11 and Accountability Act of 2010 shall not apply
12 to a position acquired in good faith prior to the
13 effective date of any rule, regulation, or order
14 under the Act that establishes the position
15 limit; provided, however, that such positions
16 shall be attributed to the trader if the trader’s
17 position is increased after the effective date
18 such position limit rule, regulation, or order.”.

19 **SEC. 130. MULTILATERAL CLEARING ORGANIZATIONS.**

20 Sections 408 and 409 of the Federal Deposit Insur-
21 ance Corporation Improvement Act of 1991 (12 U.S.C.
22 4421, 4422) are repealed.

1 **SEC. 131. ENFORCEMENT.**

2 (a) ENFORCEMENT AUTHORITY.—The Commodity
3 Exchange Act is amended by inserting after section 4b (7
4 U.S.C. 6b) the following:

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

6 “(a) COMMISSION.—Except as provided in sub-
7 sections (b), (c), and (d), the Commission shall have exclu-
8 sive authority to enforce the amendments made by the
9 Wall Street Transparency and Accountability Act of 2010
10 with respect to any person.

11 “(b) PRUDENTIAL REGULATORS.—The prudential
12 regulators shall have exclusive authority to enforce section
13 4s(e) and other prudential requirements of this Act with
14 respect to banks, and branches or agencies of foreign
15 banks that are swap dealers or major swap participants.

16 “(c) REFERRALS.—

17 “(1) PRUDENTIAL REGULATORS.—If the pru-
18 dential regulator for a swap dealer or major swap
19 participant has cause to believe that the swap dealer
20 or major swap participant, or any affiliate or divi-
21 sion of the swap dealer or major swap participant,
22 may have engaged in conduct that constitutes a vio-
23 lation of the nonprudential requirements of this Act
24 (including section 4s or rules adopted by the Com-
25 mission under that section), the prudential regulator

1 shall promptly notify the Commission in a written
2 report that includes—

3 “(A) a request that the Commission ini-
4 tiate an enforcement proceeding under this Act;
5 and

6 “(B) an explanation of the facts and cir-
7 cumstances that led to the preparation of the
8 written report.

9 “(2) COMMISSION.—If the Commission has
10 cause to believe that a swap dealer or major swap
11 participant that has a prudential regulator may have
12 engaged in conduct that constitutes a violation of
13 any prudential requirement of section 4s or rules
14 adopted by the Commission under that section, the
15 Commission may notify the prudential regulator of
16 the conduct in a written report that includes—

17 “(A) a request that the prudential regu-
18 lator initiate an enforcement proceeding under
19 this Act or any other Federal law (including
20 regulations); and

21 “(B) an explanation of the concerns of the
22 Commission, and a description of the facts and
23 circumstances, that led to the preparation of
24 the written report.

25 “(d) BACKSTOP ENFORCEMENT AUTHORITY.—

1 “(1) INITIATION OF ENFORCEMENT PRO-
2 CEEDING BY PRUDENTIAL REGULATOR.—If the
3 Commission does not initiate an enforcement pro-
4 ceeding before the end of the 90-day period begin-
5 ning on the date on which the Commission receives
6 a written report under subsection (c)(1), the pruden-
7 tial regulator may initiate an enforcement pro-
8 ceeding.

9 “(2) INITIATION OF ENFORCEMENT PRO-
10 CEEDING BY COMMISSION.—If the prudential regu-
11 lator does not initiate an enforcement proceeding be-
12 fore the end of the 90-day period beginning on the
13 date on which the prudential regulator receives a
14 written report under subsection (c)(2), the Commis-
15 sion may initiate an enforcement proceeding.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 4b of the Commodity Exchange Act
18 (7 U.S.C. 6b) is amended—

19 (A) in subsection (a)(2), by striking “or
20 other agreement, contract, or transaction sub-
21 ject to paragraphs (1) and (2) of section
22 5a(g),” and inserting “or swap,”;

23 (B) in subsection (b), by striking “or other
24 agreement, contract or transaction subject to

1 paragraphs (1) and (2) of section 5a(g),” and
2 inserting “or swap,”; and

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

4 “(e) It shall be unlawful for any person, directly or
5 indirectly, by the use of any means or instrumentality of
6 interstate commerce, or of the mails, or of any facility of
7 any registered entity, in or in connection with any order
8 to make, or the making of, any contract of sale of any
9 commodity for future delivery (or option on such a con-
10 tract), or any swap, on a group or index of securities (or
11 any interest therein or based on the value thereof) that
12 is a broad-based security index—

13 “(1) to employ any device, scheme, or artifice to
14 defraud;

15 “(2) to make any untrue statement of a mate-
16 rial fact or to omit to state a material fact necessary
17 in order to make the statements made, in the light
18 of the circumstances under which they were made,
19 not misleading; or

20 “(3) to engage in any act, practice, or course of
21 business which operates or would operate as a fraud
22 or deceit upon any person.”.

23 (2) Section 4c(a)(1) of the Commodity Ex-
24 change Act (7 U.S.C. 6c(a)(1)) is amended by in-

1 serting “or swap” before “if the transaction is used
2 or may be used”.

3 (3) Section 6(c) of the Commodity Exchange
4 Act (7 U.S.C. 9) is amended in the first sentence by
5 inserting “or of any swap,” before “or has willfully
6 made”.

7 (4) Section 6(d) of the Commodity Exchange
8 Act (7 U.S.C. 13b) is amended in the first sentence,
9 in the matter preceding the proviso, by inserting “or
10 of any swap,” before “or otherwise is violating”.

11 (5) Section 6c(a) of the Commodity Exchange
12 Act (7 U.S.C. 13a-1(a)) is amended in the matter
13 preceding the proviso by inserting “or any swap”
14 after “commodity for future delivery”.

15 (6) Section 9 of the Commodity Exchange Act
16 (7 U.S.C. 13) is amended—

17 (A) in subsection (a)—

18 (i) in paragraph (2), by inserting “or
19 of any swap,” before “or to corner”; and

20 (ii) in paragraph (4), by inserting
21 “swap data repository,” before “or futures
22 association” and

23 (B) in subsection (e)(1)—

1 (i) by inserting “swap data reposi-
2 tory,” before “or registered futures asso-
3 ciation”; and

4 (ii) by inserting “, or swaps,” before
5 “on the basis”.

6 (7) Section 9(a) of the Commodity Exchange
7 Act (7 U.S.C. 13(a)) is amended by adding at the
8 end the following:

9 “(6) Any person to abuse the end user clearing
10 exemption under section 2(h)(4), as determined by
11 the Commission.”.

12 (8) Section 8(b) of the Federal Deposit Insur-
13 ance Act (12 U.S.C. 1818(b)) is amended by adding
14 at the end the following:

15 “(11) SWAPS.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), this section shall apply to any swap
18 dealer, major swap participant, security-based
19 swap dealer, major security-based swap partici-
20 pant, derivatives clearing organization, swap
21 data repository, or swap execution facility, re-
22 gardless of whether the dealer, participant, or-
23 ganization, repository, or facility is an insured
24 depository institution, for which the Board, the
25 Corporation, or the Office of the Comptroller of

1 the Currency is the appropriate Federal bank-
2 ing agency or prudential regulator for purposes
3 of the amendments made by the Wall Street
4 Transparency and Accountability Act of 2010.

5 “(B) LIMITATION.—The authority de-
6 scribed in subparagraph (A) shall be limited by,
7 and exercised in accordance with, section 4b–1
8 of the Commodity Exchange Act.”.

9 (9) Section 2(c)(2)(B) of the Commodity Ex-
10 change Act (7 U.S.C. 2(c)(2)(B)) is amended—

11 (A) by striking “(dd),” each place it ap-
12 pears;

13 (B) in clause (iii), by inserting “, and ac-
14 counts or pooled investment vehicles described
15 in clause (vi),” before “shall be subject to”; and

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

17 “(vi) This Act applies to, and the
18 Commission shall have jurisdiction over, an
19 account or pooled investment vehicle that
20 is offered for the purpose of trading, or
21 that trades, any agreement, contract, or
22 transaction in foreign currency described
23 in clause (i).”.

24 (10) Section 2(c)(2)(C) of the Commodity Ex-
25 change Act (7 U.S.C. 2(c)(2)(C)) is amended—

1 (A) by striking “(dd),” each place it ap-
2 pears;

3 (B) in clause (ii)(I), by inserting “, and ac-
4 counts or pooled investment vehicles described
5 in clause (vii),” before “shall be subject to”;
6 and

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

8 “(vii) This Act applies to, and the
9 Commission shall have jurisdiction over, an
10 account or pooled investment vehicle that
11 is offered for the purpose of trading, or
12 that trades, any agreement, contract, or
13 transaction in foreign currency described
14 in clause (i).”.

15 (11) Section 1a(19)(A)(iv)(II) of the Com-
16modity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II))
17 (as redesignated by section 111(a)(1)) is amended
18 by inserting before the semicolon at the end the fol-
19 lowing: “provided, however, that for purposes of sec-
20 tion 2(c)(2)(B)(vi) and section 2(c)(2)(C)(vii), the
21 term ‘eligible contract participant’ shall not include
22 a commodity pool in which any participant is not
23 otherwise an eligible contract participant”.

1 **SEC. 132. RETAIL COMMODITY TRANSACTIONS.**

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

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

7 (2) in paragraph (2), by adding at the end the
8 following:

9 “(D) RETAIL COMMODITY TRANS-
10 ACTIONS.—

11 “(i) APPLICABILITY.—Except as pro-
12 vided in clause (ii), this subparagraph shall
13 apply to any agreement, contract, or trans-
14 action in any commodity that is—

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

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

1 “(ii) EXCEPTIONS.—This subpara-
2 graph shall not apply to—

3 “(I) an agreement, contract, or
4 transaction described in paragraph (1)
5 or subparagraphs (A), (B), or (C), in-
6 cluding any agreement, contract, or
7 transaction specifically excluded from
8 subparagraph (A), (B), or (C);

9 “(II) any security;

10 “(III) a contract of sale that—

11 “(aa) results in actual deliv-
12 ery within 28 days or such other
13 period as the Commission may
14 determine by rule or regulation
15 based upon the typical commer-
16 cial practice in cash or spot mar-
17 kets for the commodity involved;
18 or

19 “(bb) creates an enforceable
20 obligation to deliver between a
21 seller and a buyer that have the
22 ability to deliver and accept deliv-
23 ery, respectively, in connection
24 with the line of business of the
25 seller and buyer; or

1 “(IV) an agreement, contract, or
2 transaction that is listed on a national
3 securities exchange registered under
4 section 6(a) of the Securities Ex-
5 change Act of 1934 (15 U.S.C.
6 78f(a)); or

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

11 “(iii) ENFORCEMENT.—Sections 4(a),
12 4(b), and 4b apply to any agreement, con-
13 tract, or transaction described in clause (i),
14 as if the agreement, contract, or trans-
15 action was a contract of sale of a com-
16 modity for future delivery.

17 “(iv) ELIGIBLE COMMERCIAL ENTI-
18 TY.—For purposes of this subparagraph,
19 an agricultural producer, packer, or han-
20 dler shall be considered to be an eligible
21 commercial entity for any agreement, con-
22 tract, or transaction for a commodity in
23 connection with the line of business of the
24 agricultural producer, packer, or handler.

1 “(v) ACTUAL DELIVERY.—For pur-
2 poses of clause (ii)(III), the term ‘actual
3 delivery’ does not include delivery to a
4 third party in a financed transaction in
5 which the commodity is held as collat-
6 eral.”.

7 (b) GRAMM-LEACH-BLILEY ACT.—Section 206 of the
8 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.
9 78c note) is amended—

10 (1) in subsection (a), in the matter preceding
11 paragraph (1), by striking “For purposes of” and
12 inserting “Except as provided in subsection (e), for
13 purposes of”; and

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

15 “(e) LIMITATION OF DEFINITION OF IDENTIFIED
16 BANKING PRODUCT.—Except as provided in section 403
17 of the Legal Certainty for Bank Products Act of 2000 (7
18 U.S.C. 27a), for purposes of section 131 of the Wall Street
19 Transparency and Accountability Act of 2010, the term
20 ‘identified banking product’ does not include a retail com-
21 modity transaction.”.

22 (c) CONFORMING AMENDMENTS RELATING TO RE-
23 TAIL FOREIGN EXCHANGE TRANSACTIONS.—

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

4 (A) in item (aa), by inserting “United
5 States” before “financial institution”;

6 (B) by striking items (dd) and (ff);

7 (C) by redesignating items (ee) and (gg) as
8 items (dd) and (ff), respectively; and

9 (D) in item (dd) (as so redesignated), by
10 striking the semicolon and inserting “; or”.

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

15 “(E) PROHIBITION.—

16 “(i) DEFINITION OF FEDERAL REGU-
17 LATORY AGENCY.—In this subparagraph,
18 the term ‘Federal regulatory agency’
19 means—

20 “(I) the Commission;

21 “(II) the Securities and Ex-
22 change Commission;

23 “(III) an appropriate Federal
24 banking agency;

1 “(IV) the National Credit Union
2 Association; and

3 “(V) the Farm Credit Adminis-
4 tration.

5 “(ii) PROHIBITION.—A person de-
6 scribed in subparagraph (B)(i)(II) for
7 which there is a Federal regulatory agency
8 shall not offer to, or enter into with, a per-
9 son that is not an eligible contract partici-
10 pant, any agreement, contract, or trans-
11 action in foreign currency described in sub-
12 paragraph (B)(i)(I) except pursuant to a
13 rule or regulation of a Federal regulatory
14 agency allowing the agreement, contract,
15 or transaction under such terms and condi-
16 tions as the Federal regulatory agency
17 shall prescribe.

18 “(iii) REQUIREMENTS OF RULES AND
19 REGULATIONS.—

20 “(I) IN GENERAL.—The rules
21 and regulations described in clause
22 (ii) shall prescribe appropriate re-
23 quirements with respect to—

24 “(aa) disclosure;

25 “(bb) recordkeeping;

1 “(cc) capital and margin;
2 “(dd) reporting;
3 “(ee) business conduct;
4 “(ff) documentation; and
5 “(gg) such other standards
6 or requirements as the Federal
7 regulatory agency shall determine
8 to be necessary.

9 “(II) TREATMENT.—The rules or
10 regulations described in clause (ii)
11 shall treat all agreements, contracts,
12 and transactions in foreign currency
13 described in subparagraph (B)(i)(I),
14 and all agreements, contracts, and
15 transactions in foreign currency that
16 are functionally or economically simi-
17 lar to agreements, contracts, or trans-
18 actions described in subparagraph
19 (B)(i)(I), similarly.”.

20 **SEC. 133. OTHER AUTHORITY.**

21 Unless otherwise provided by the amendments made
22 by this title, the amendments made by this title do not
23 divest any appropriate Federal banking agency, the Com-
24modity Futures Trading Commission, the Securities and

1 Exchange Commission, or other Federal or State agency
2 of any authority derived from any other applicable law.

3 **SEC. 134. RESTITUTION REMEDIES.**

4 Section 6c(d) of the Commodity Exchange Act (7
5 U.S.C. 13a–1(d)) is amended by adding at the end the
6 following:

7 “(3) **EQUITABLE REMEDIES.**—In any action
8 brought under this section, the Commission may
9 seek, and the court shall have jurisdiction to impose,
10 on a proper showing, on any person found in the ac-
11 tion to have committed any violation, equitable rem-
12 edies including—

13 “(A) restitution to persons who have sus-
14 tained losses proximately caused by such viola-
15 tion (in the amount of such losses); and

16 “(B) disgorgement of gains received in
17 connection with such violation.”.

18 **SEC. 135. ENHANCED COMPLIANCE BY REGISTERED ENTI-**
19 **TIES.**

20 (a) **CORE PRINCIPLES FOR CONTRACT MARKETS.**—
21 Section 5(d) of the Commodity Exchange Act (7 U.S.C.
22 7(d)) (as amended by section 125(b)) is amended by strik-
23 ing paragraph (1) and inserting the following:

24 “(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.—

14 (I) IN GENERAL.—In connection
15 with the listing of a swap for clearing
16 by a derivatives clearing organization,
17 the Commission shall determine, upon
18 request or on its own motion, the ini-
19 tial eligibility, or the continuing quali-
20 fication, of a derivatives clearing orga-
21 nization to clear such a swap under
22 those criteria, conditions, or rules that
23 the Commission, in its discretion, de-
24 termines.

1 (II) REQUIREMENTS.—Any such
2 criteria, conditions, or rules shall con-
3 sider—

4 (aa) the financial integrity
5 of the derivatives clearing organi-
6 zation; and

7 (bb) any other factors which
8 the Commission determines may
9 be appropriate.

10 (iii) DEADLINE.—The Commission
11 shall take final action under clauses (i)
12 and (ii) in not later than 90 days from the
13 commencement of its review unless the
14 party seeking to offer the contract or swap
15 agrees to an extension of this time limita-
16 tion.

17 (e) VIOLATION OF CORE PRINCIPLES.—Section 5c of
18 the Commodity Exchange Act (7 U.S.C. 7a–2) is amended
19 by striking subsection (d).

20 **SEC. 136. INSIDER TRADING.**

21 Section 4c(a) of the Commodity Exchange Act (7
22 U.S.C. 6c(a)) is amended by adding at the end the fol-
23 lowing:

24 “(3) CONTRACT OF SALE.—It shall be unlawful
25 for any employee or agent of any department or

1 agency of the Federal Government who, by virtue of
2 the employment or position of the employee or
3 agent, acquires information that may affect or tend
4 to affect the price of any commodity in interstate
5 commerce, or for future delivery, or any swap, and
6 which information has not been disseminated by the
7 department or agency of the Federal Government
8 holding or creating the information in a manner
9 which makes it generally available to the trading
10 public, or disclosed in a criminal, civil, or adminis-
11 trative hearing, or in a congressional, administrative,
12 or Government Accountability Office report, hearing,
13 audit, or investigation, to use the information in his
14 personal capacity and for personal gain to enter
15 into, or offer to enter into—

16 “(A) a contract of sale of a commodity for
17 future delivery (or option on such a contract);

18 “(B) an option (other than an option exe-
19 cuted or traded on a national securities ex-
20 change registered pursuant to section 6(a) of
21 the Securities Exchange Act of 1934 (15
22 U.S.C. 78f(a)); or

23 “(C) a swap.

24 “(4) IMPARTING OF NONPUBLIC INFORMA-
25 TION.—It shall be unlawful—

1 “(A) for any employee or agent of any de-
2 partment or agency of the Federal Government
3 who, by virtue of the employment or position of
4 the employee or agent, acquires information
5 that may affect or tend to affect the price of
6 any commodity in interstate commerce, or for
7 future delivery, or any swap, and which infor-
8 mation has not been disseminated by the de-
9 partment or agency of the Federal Government
10 holding or creating the information in a manner
11 which makes it generally available to the trad-
12 ing public, or disclosed in a criminal, civil, or
13 administrative hearing, or in a congressional,
14 administrative, or Government Accountability
15 Office report, hearing, audit, or investigation,
16 to impart the information in his personal capac-
17 ity and for personal gain with intent to assist
18 another person, directly or indirectly, to use the
19 information to enter into, or offer to enter
20 into—

21 “(i) a contract of sale of a commodity
22 for future delivery (or option on such a
23 contract);

24 “(ii) an option (other than an option
25 executed or traded on a national securities

1 exchange registered pursuant to section
2 6(a) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78f(a)); or
4 “(iii) a swap; and
5 “(B) for any person knowingly to acquire,
6 by any means whatsoever, governmental infor-
7 mation that may affect or tend to affect the
8 price of any commodity in interstate commerce,
9 or for future delivery, or any swap, where such
10 person knows, or in the exercise of reasonable
11 care should know, that such information has
12 not been disseminated by the department or
13 agency of the Federal Government holding or
14 creating the information in a manner which
15 makes it generally available to the trading pub-
16 lic, or disclosed in a criminal, civil, or adminis-
17 trative hearing, or in a congressional, adminis-
18 trative, or Government Accountability Office re-
19 port, hearing, audit, or investigation, and to use
20 such information, or to impart such information
21 with the intent to assist another person, directly
22 or indirectly, to use such information to enter
23 into, or offer to enter into—

1 “(i) a contract of sale of a commodity
2 for future delivery (or option on such a
3 contract);

4 “(ii) an option (other than an option
5 executed or traded on a national securities
6 exchange registered pursuant to section
7 6(a) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78f(a)); or

9 “(iii) a swap.

10 *Provided*, however, that nothing in this
11 subparagraph shall preclude a person that
12 has provided information concerning, or
13 generated by, the person, its operations or
14 activities, to any employee or agent of any
15 department or agency of the Federal Gov-
16 ernment, voluntarily or as required by law,
17 from using such information to enter into,
18 or offer to enter into, a contract of sale,
19 option, or swap described in clauses (i), (ii)
20 or (iii).”.

21 **SEC. 137. ANTIDISRUPTIVE PRACTICES AUTHORITY.**

22 Section 4c(a) of the Commodity Exchange Act (7
23 U.S.C. 6c(a)) (as amended by section 136) 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. 138. 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 of not less than
16 10 percent, in total, or exceeding an amount equal
17 to 30 percent, in total, of the monetary judgment
18 that has been collected in the action (or related ac-
19 tions) to 1 or more whistleblowers who voluntarily
20 provided original information to the Commission
21 that led to the successful resolution of the action.

22 “(2) AMOUNT PAYABLE.—Any amount payable
23 under paragraph (1) shall be paid from the fund de-
24 scribed in subsection (f).

1 “(b) DETERMINATION OF AMOUNT OF AWARD; DE-
2 NIAL OF AWARD.—

3 “(1) DETERMINATION OF AMOUNT OF
4 AWARD.—In determining the amount of an award,
5 within the limit specified in subsection (a), the Com-
6 mission may take into account the significance of
7 the whistleblower’s information to the successful res-
8 olution of the judicial or administrative action de-
9 scribed in subsection (a), the degree of assistance
10 provided by the whistleblower and any legal rep-
11 resentative of the whistleblower in such action, the
12 Commission’s interest in deterring violations of the
13 Act and regulations thereunder by making awards to
14 whistleblowers who provide original information that
15 leads to the successful enforcement of such laws,
16 and such additional factors as the Commission may
17 establish by rule or regulation.

18 “(2) DENIAL OF AWARD.—

19 “(A) IN GENERAL.—No award under sub-
20 section (a) shall be made to any individual
21 who—

22 “(i) is, or was at the time he or she
23 acquired the original information sub-
24 mitted to the Commission, a member, offi-
25 cer, or employee of any department or

1 agency of the Federal Government, a reg-
2 istered entity, a registered futures associa-
3 tion, or a self-regulatory organization as
4 defined in section 3(a) of the Securities
5 Exchange Act of 1934 (15 U.S.C. 78c(a));
6 or

7 “(ii) fails to submit information to the
8 Commission in such form as the Commis-
9 sion may, by rule or regulation, require.

10 “(B) DETERMINATION.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), the Commission may determine to
13 make an award to an individual under sub-
14 section (a) notwithstanding that such indi-
15 vidual knowingly violated, assisted in the
16 violation of, or caused to be violated any
17 rule, regulation, or order of the Commis-
18 sion with respect to which the Commission
19 or a court has imposed a monetary judg-
20 ment.

21 “(ii) LIMITATION.—No award under
22 subsection (a) shall be made to any indi-
23 vidual who is convicted of a criminal viola-
24 tion related to the judicial or administra-
25 tive action for which the individual other-

1 wise could receive an award under this sec-
2 tion.

3 “(c) REPRESENTATION.—

4 “(1) PERMITTED REPRESENTATION.—Any
5 whistleblower who makes a claim for an award under
6 subsection (a) may be represented by counsel.

7 “(2) REQUIRED REPRESENTATION.—

8 “(A) IN GENERAL.—Any whistleblower
9 who makes a claim for an award under sub-
10 section (a) must be represented by counsel if
11 the whistleblower submits the information upon
12 which the claim is based anonymously.

13 “(B) DISCLOSURE.—Prior to the payment
14 of an award, a whistleblower must disclose his
15 or her identity and provide such other informa-
16 tion as the Commission may require.

17 “(d) NO CONTRACT NECESSARY.—No contract with
18 the Commission is necessary for any whistleblower to re-
19 ceive an award under subsection (a), unless the Commis-
20 sion, by rule or regulation, so requires.

21 “(e) APPEALS.—Any determination made under this
22 section, including whether, to whom, or in what amount
23 to make awards, shall be in the discretion of the Commis-
24 sion. Any such determination may be appealed to the ap-
25 propriate court of appeals of the United States not more

1 than 30 days after the determination is issued by the
2 Commission. The court shall review the determination
3 made by the Commission in accordance with section 7064
4 of title 5, United States Code.

5 “(f) COMMODITY FUTURES TRADING COMMISSION
6 CUSTOMER PROTECTION FUND.—

7 “(1) ESTABLISHMENT.—There is established in
8 the Treasury of the United States a revolving fund
9 to be known as the ‘Commodity Futures Trading
10 Commission Customer Protection Fund’ (referred to
11 in this subsection as the ‘Fund’).

12 “(2) USE OF FUND.—The Fund shall be avail-
13 able to the Commission, without further appropria-
14 tion or fiscal year limitation, for—

15 “(A) the payment of awards to whistle-
16 blowers as provided in subsection (a); and

17 “(B) the funding of customer education
18 initiatives designed to help customers protect
19 themselves against fraud or other violations of
20 this Act, or the rules and regulations there-
21 under.

22 “(3) DEPOSITS AND CREDITS.—There shall be
23 deposited into or credited to the Fund—

24 “(A) any monetary judgment collected by
25 the Commission in any judicial or administra-

1 tive action brought by the Commission under
2 this Act, that is not otherwise distributed to
3 victims of a violation of this Act or the rules
4 and regulations thereunder underlying such ac-
5 tion, unless the balance of the Fund at the time
6 the monetary judgment is collected exceeds
7 \$100,000,000; and

8 “(B) all income from investments made
9 under paragraph (4).

10 “(4) INVESTMENTS.—

11 “(A) AMOUNTS IN FUND MAY BE IN-
12 VESTED.—The Commission may request the
13 Secretary of the Treasury to invest the portion
14 of the Fund that is not, in the Commission’s
15 judgment, required to meet the current needs of
16 the Fund.

17 “(B) ELIGIBLE INVESTMENTS.—Invest-
18 ments shall be made by the Secretary of the
19 Treasury in obligations of the United States or
20 obligations that are guaranteed as to principal
21 and interest by the United States, with matu-
22 rities suitable to the needs of the Fund as de-
23 termined by the Commission.

24 “(C) INTEREST AND PROCEEDS CRED-
25 ITED.—The interest on, and the proceeds from

1 the sale or redemption of, any obligations held
2 in the Fund shall be credited to, and form a
3 part of, the Fund.

4 “(5) REPORTS TO CONGRESS.—Not later than
5 October 30 of each year, the Commission shall
6 transmit to the Committee on Agriculture, Nutri-
7 tion, and Forestry of the Senate, and the Committee
8 on Agriculture of the House of Representatives a re-
9 port on—

10 “(A) the Commission’s whistleblower
11 award program under this section, including a
12 description of the number of awards granted
13 and the types of cases in which awards were
14 granted during the preceding fiscal year;

15 “(B) customer education initiatives de-
16 scribed in paragraph (2)(B) that were funded
17 by the Fund during the preceding fiscal year;

18 “(C) the balance of the Fund at the begin-
19 ning of the preceding fiscal year;

20 “(D) the amounts deposited into or cred-
21 ited to the Fund during the preceding fiscal
22 year;

23 “(E) the amount of earnings on invest-
24 ments of amounts in the Fund during the pre-
25 ceding fiscal year;

1 “(F) the amount paid from the Fund dur-
2 ing the preceding fiscal year to whistleblowers
3 pursuant to subsection (a);

4 “(G) the amount paid from the Fund dur-
5 ing the preceding fiscal year for customer edu-
6 cation initiatives described in paragraph (2)(B);

7 “(H) the balance of the Fund at the end
8 of the preceding fiscal year; and

9 “(I) a complete set of audited financial
10 statements, including a balance sheet, income
11 statement, and cash flow analysis.

12 “(g) PROTECTION OF WHISTLEBLOWERS.—

13 “(1) PROHIBITION AGAINST RETALIATION.—

14 “(A) IN GENERAL.—Any employee, con-
15 tractor, or agent shall be entitled to all relief
16 necessary to make that employee, contractor, or
17 agent whole, if that employee, contractor, or
18 agent is discharged, demoted, suspended,
19 threatened, harassed, or in any other manner
20 discriminated against in the terms and condi-
21 tions of employment because of any lawful act
22 done by the employee, contractor, or agent in
23 providing information to the Commission, or in
24 assisting in any investigation or judicial or ad-

1 ministrative action of the Commission based
2 upon or related to such information.

3 “(B) RELIEF.—

4 “(i) IN GENERAL.—Relief under sub-
5 paragraph (A) shall include reinstatement
6 with the same seniority status that the em-
7 ployee, contractor, or agent would have
8 had, but for the discrimination, 2 times the
9 amount of back pay (with interest), and
10 compensation for any special damages sus-
11 tained as a result of the discrimination, in-
12 cluding litigation costs, expert witness fees,
13 and reasonable attorneys’ fees.

14 “(ii) FORUM.—An action under this
15 subsection may be brought in the appro-
16 priate district court of the United States
17 for the relief provided in this subsection.

18 “(C) PROCEDURE.—

19 “(i) SUBPOENAS.—A subpoena requir-
20 ing the attendance of a witness at a trial
21 or hearing conducted under this subsection
22 may be served at any place in the United
23 States.

24 “(ii) STATUTE OF LIMITATIONS.—An
25 action under this subsection may not be

1 brought more than 6 years after the date
2 on which the violation reported in subpara-
3 graph (A) is committed, or more than 3
4 years after the date when facts material to
5 the right of action are known or reasonably
6 should have been known by the whistle-
7 blower, but in no event after 10 years after
8 the date on which the violation is com-
9 mitted.

10 “(2) CONFIDENTIALITY.—

11 “(A) INFORMATION PROVIDED.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in subparagraph (B), all information
14 provided to the Commission by a whistle-
15 blower shall be confidential and privileged
16 as an evidentiary matter (and shall not be
17 subject to civil discovery or other legal
18 process) in any proceeding in any Federal
19 or State court or administrative agency,
20 and shall be exempt from disclosure, in the
21 hands of a department or agency of the
22 Federal Government, under section 552 of
23 title 5, United States Code (commonly
24 known as the ‘Freedom of Information
25 Act’) or otherwise, unless and until re-

1 required to be disclosed to a defendant or re-
2 spondent in connection with a public pro-
3 ceeding instituted by the Commission or
4 any entity described in subparagraph (B).

5 “(ii) CONSTRUCTION.—For purposes
6 of section 552 of title 5, United States
7 Code, this paragraph shall be considered a
8 statute described in subsection (b)(3)(B).

9 “(iii) EFFECT.—Nothing herein is in-
10 tended to limit the Attorney General’s abil-
11 ity to present such evidence to a grand
12 jury or to share such evidence with poten-
13 tial witnesses or defendants in the course
14 of an ongoing criminal investigation.

15 “(B) AVAILABILITY TO GOVERNMENT
16 AGENCIES.—Without the loss of its status as
17 confidential and privileged in the hands of the
18 Commission, all information referred to in sub-
19 paragraph (A) may, in the discretion of the
20 Commission, when determined by the Commis-
21 sion to be necessary or appropriate to accom-
22 plish the purposes of this Act and protect cus-
23 tomers, be made available to—

24 “(i) the Department of Justice;

1 “(ii) an appropriate department or
2 agency of the Federal Government, acting
3 within the scope of its jurisdiction;

4 “(iii) a registered entity, registered
5 futures association, or self-regulatory orga-
6 nization as defined in section 3(a) of the
7 Securities Exchange Act of 1934 (15
8 U.S.C. 78c(a));

9 “(iv) a State attorney general in con-
10 nection with any criminal investigation;

11 “(v) an appropriate department or
12 agency of any State, acting within the
13 scope of its jurisdiction; and

14 “(vi) a foreign futures authority,
15 each of which shall maintain such information
16 as confidential and privileged, in accordance
17 with the requirements in subparagraph (A).

18 “(3) RIGHTS RETAINED.—Nothing in this sec-
19 tion shall be deemed to diminish the rights, privi-
20 leges, or remedies of any whistleblower under any
21 Federal or State law, or under any collective bar-
22 gaining agreement.

23 “(h) RULEMAKING AUTHORITY.—The Commission
24 shall have the authority to issue such rules and regulations
25 as may be necessary or appropriate to implement the pro-

1 visions of this section consistent with the purposes of this
2 section.

3 “(i) DEFINITIONS.—In this section:

4 “(1) MONETARY JUDGMENT.—The term ‘mone-
5 tary judgment’, when used with respect to any judi-
6 cial or administrative action, means any monies (in-
7 cluding but not limited to penalties, disgorgement,
8 restitution, and interest) ordered to be paid as a re-
9 sult of such action or any settlement of such action.

10 “(2) ORIGINAL INFORMATION.—The term
11 ‘original information’ means information that is—

12 “(A) based on the direct and independent
13 knowledge or analysis of a whistleblower;

14 “(B) not known to the Commission from
15 any other source; and

16 “(C) not based on allegations in a judicial
17 or administrative hearing, in a governmental re-
18 port, hearing, audit, or investigation, or from
19 the news media, unless the whistleblower is the
20 initial source of the information that resulted in
21 the judicial or administrative hearing, govern-
22 mental report, hearing, audit, or investigation,
23 or the news media’s report on the allegations.

24 “(3) RELATED ACTION.—The term ‘related ac-
25 tion’, when used with respect to any judicial or ad-

1 ministrative action brought by the Commission
2 under this Act, means any judicial or administrative
3 action brought by an entity described in subsection
4 (g)(2)(B) that is based upon the same original infor-
5 mation voluntarily provided by a whistleblower that
6 led to the successful resolution of the Commission
7 action.

8 “(4) SUCCESSFUL RESOLUTION.—The term
9 ‘successful resolution’, when used with respect to
10 any judicial or administrative action brought by the
11 Commission under this Act, includes any settlement
12 of such action.

13 “(5) WHISTLEBLOWER.—The term ‘whistle-
14 blower’ means an individual, or 2 or more individ-
15 uals acting jointly, who submit information to the
16 Commission as provided in this section.

17 “(j) IMPLEMENTING RULES.—The Commission shall
18 issue final rules or regulations implementing the provi-
19 sions of this section no later than 270 days after the date
20 of enactment of the Wall Street Transparency and Ac-
21 countability Act of 2010.

22 “(k) ORIGINAL INFORMATION.—Information sub-
23 mitted to the Commission by a whistleblower in accord-
24 ance with rules or regulations implementing the provisions
25 of this section shall not lose its status as original informa-

1 tion, as defined in subsection (i)(1), solely because the
2 whistleblower submitted such information prior to the ef-
3 fective date of such rules or regulations, provided such in-
4 formation was submitted after the date of enactment of
5 the Wall Street Transparency and Accountability Act of
6 2010.

7 “(l) AWARDS.—A whistleblower may receive an award
8 pursuant to this section regardless of whether any viola-
9 tion of a provision of this Act, or a rule or regulation
10 thereunder, underlying the judicial or administrative ac-
11 tion upon which the award is based occurred prior to the
12 date of enactment of the Wall Street Transparency and
13 Accountability Act of 2010.

14 “(m) PROVISION OF FALSE INFORMATION.—A whis-
15 tleblower who knowingly and willfully makes any false, fic-
16 titious, or fraudulent statement or representation, or who
17 makes or uses any false writing or document knowing the
18 same to contain any false, fictitious, or fraudulent state-
19 ment or entry, shall not be entitled to an award under
20 this section and shall be subject to prosecution under sec-
21 tion 1001 of title 18, United States Code.”.

22 **SEC. 139. CONFORMING AMENDMENTS.**

23 (a) Section 2(e)(1) of the Commodity Exchange Act
24 (7 U.S.C. 2(e)(1)) is amended, in the matter preceding

1 subparagraph (A), by striking “5a (to the extent provided
2 in section 5a(g)),”.

3 (b) Section 4d of the Commodity Exchange Act (7
4 U.S.C. 6d) (as amended by section 114) is amended—

5 (1) in subsection (a)—

6 (A) in the matter preceding paragraph

7 (1)—

8 (i) by striking “engage as” and insert-
9 ing “be a”; and

10 (ii) by striking “or introducing
11 broker” and all that follows through “or
12 derivatives transaction execution facility”;

13 (B) in paragraph (1), by striking “or in-
14 troducing broker”; and

15 (C) in paragraph (2), by striking “if a fu-
16 tures commission merchant,”; and

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

18 “(g) It shall be unlawful for any person to be an in-
19 troducing broker unless such person shall have registered
20 under this Act with the Commission as an introducing
21 broker and such registration shall not have expired nor
22 been suspended nor revoked.”.

23 (c) Section 4m of the Commodity Exchange Act (7
24 U.S.C. 6m) is amended—

25 (1) in paragraph (3)—

1 (A) by striking “(3) Subsection (1) of this
2 section” and inserting the following:

3 “(3) EXCEPTION.—

4 “(A) IN GENERAL.—Paragraph (1)”; and

5 (B) by striking “to any investment trust”
6 and all that follows through the period at the
7 end and inserting the following: “to any com-
8 modity pool that is engaged primarily in trad-
9 ing commodity interests.

10 “(B) ENGAGED PRIMARILY.—For purposes
11 of subparagraph (A), a commodity trading advi-
12 sor or a commodity pool shall be considered to
13 be ‘engaged primarily’ in the business of being
14 a commodity trading advisor or commodity pool
15 if it is or holds itself out to the public as being
16 engaged primarily, or proposes to engage pri-
17 marily, in the business of investing, reinvesting,
18 owning, holding, or trading in commodity inter-
19 ests.

20 “(C) COMMODITY INTERESTS.—For pur-
21 poses of this paragraph, commodity interests
22 shall include contracts of sale of a commodity
23 for future delivery, options on such contracts,
24 security futures, swaps, leverage contracts, for-
25 eign exchange, spot and forward contracts on

1 physical commodities, and any monies held in
2 an account used for trading commodity inter-
3 ests.”; and

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

5 “(4) PREVENTION OF DUPLICATIVE FEDERAL
6 REGULATION.—

7 “(A) IN GENERAL.—Notwithstanding any
8 other provision of law and except as provided in
9 subparagraph (B), no commodity trading advi-
10 sor or commodity pool operator shall be subject
11 to the registration or related reporting require-
12 ments of another Federal agency if the com-
13 modity trading advisor or commodity pool oper-
14 ator—

15 “(i) operates, or acts as an advisor to,
16 only 1 or more commodity pools that—

17 “(I) would be an investment com-
18 pany as defined in section 3(a) of the
19 Investment Company Act of 1940 (15
20 U.S.C. 80a-3(a)) but for section
21 3(c)(7) of that Act; and

22 “(II) have in the aggregate less
23 than \$5,000,000,000 in assets; and

24 “(ii)(I) was registered under this Act
25 as of January 1, 2009 and has remained

1 registered under this Act at all times since
2 that date; or

3 “(II) in the case of a commodity trad-
4 ing advisor, has provided advice since Jan-
5 uary 1, 2009 only to 1 or more commodity
6 pools of the type described in clause (i) the
7 operators of which are, and have been at
8 all times since January 1, 2009, registered
9 under this Act.

10 “(B) EXCEPTION.—The Commission
11 may—

12 “(i) require any commodity trading
13 advisor or commodity pool operator de-
14 scribed in subparagraph (A) to maintain
15 such records of, and file with the Commis-
16 sion such reports regarding, commodity
17 pools operated or advised by the com-
18 modity trading advisor or commodity pool
19 operator as the Commission determines are
20 necessary and appropriate for the assess-
21 ment of systemic risk; and

22 “(ii) provide or make available to
23 other Federal agencies for legitimate pur-
24 poses within the jurisdiction of the agen-

1 cies those reports or records or the infor-
2 mation contained in the reports.

3 “(C) CLARIFICATION.—A commodity trad-
4 ing advisor or commodity pool operator that
5 fails to maintain continuous registration under
6 this Act after January 1, 2009, shall not be
7 covered under subparagraph (A) as of the date
8 of the lapse in registration.”.

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

11 (1) in subsection (a)(1)—

12 (A) by striking “, 5a(d),”; and

13 (B) by striking “and section (2)(h)(7) with
14 respect to significant price discovery con-
15 tracts,”; and

16 (2) in subsection (f)(1), by striking “section
17 4d(c) of this Act” and inserting “section 4d(e)”.

18 (e) Section 5e of the Commodity Exchange Act (7
19 U.S.C. 7b) is amended by striking “or revocation of the
20 right of an electronic trading facility to rely on the exemp-
21 tion set forth in section 2(h)(3) with respect to a signifi-
22 cant price discovery contract,”.

23 (f) Section 6(b) of the Commodity Exchange Act (7
24 U.S.C. 8(b)) is amended in the first sentence by striking
25 “, or to revoke the right of an electronic trading facility

1 to rely on the exemption set forth in section 2(h)(3) with
2 respect to a significant price discovery contract,”.

3 (g) Section 12(e)(2)(B) of the Commodity Exchange
4 Act (7 U.S.C. 16(e)(2)(B)) is amended—

5 (1) by striking “section 2(c), 2(d), 2(f), or 2(g)
6 of this Act” and inserting “section 2(c), 2(f), or 2(i)
7 of this Act”; and

8 (2) by striking “2(h) or”.

9 (h) Section 17(r)(1) of the Commodity Exchange Act
10 (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(c)
11 of this Act” and inserting “section 4d(e)”.

12 (i) Section 22(b)(1)(A) of the Commodity Exchange
13 Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-
14 tion 2(h)(7) or”.

15 (j) Section 408(2)(C) of the Federal Deposit Insur-
16 ance Corporation Improvement Act of 1991 (12 U.S.C.
17 4421(2)(C)) is amended—

18 (1) by striking “section 2(c), 2(d), 2(f), or
19 (2)(g) of such Act” and inserting “section 2(c), 2(f),
20 or 2(i) of that Act”; and

21 (2) by striking “2(h) or”.

22 **SEC. 140. STUDY ON OVERSIGHT OF CARBON MARKETS.**

23 (a) INTERAGENCY WORKING GROUP.—There is es-
24 tablished to carry out this section an interagency working

1 group (referred to in this section as the “interagency
2 group”) composed of the following members or designees:

3 (1) The Chairman of the Commodity Futures
4 Trading Commission (referred to in this section as
5 the “Commission”), who shall serve as Chairman of
6 the interagency group.

7 (2) The Secretary of Agriculture.

8 (3) The Secretary of the Treasury.

9 (4) The Chairman of the Securities and Ex-
10 change Commission.

11 (5) The Administrator of the Environmental
12 Protection Agency.

13 (6) The Chairman of the Federal Energy Regu-
14 latory Commission.

15 (7) The Commissioner of the Federal Trade
16 Commission.

17 (8) The Administrator of the Energy Informa-
18 tion Administration.

19 (b) ADMINISTRATIVE SUPPORT.—The Commission
20 shall provide the interagency group such administrative
21 support services as are necessary to enable the interagency
22 group to carry out the functions of the interagency group
23 under this section.

24 (c) CONSULTATION.—In carrying out this section, the
25 interagency group shall consult with representatives of ex-

1 changes, clearinghouses, self-regulatory bodies, major car-
2 bon market participants, consumers, and the general pub-
3 lic, as the interagency group determines to be appropriate.

4 (d) STUDY.—The interagency group shall conduct a
5 study on the oversight of existing and prospective carbon
6 markets to ensure an efficient, secure, and transparent
7 carbon market, including oversight of spot markets and
8 derivative markets.

9 (e) REPORT.—Not later than 180 days after the date
10 of enactment of this Act, the interagency group shall sub-
11 mit to Congress a report on the results of the study con-
12 ducted under subsection (b), including recommendations
13 for the oversight of existing and prospective carbon mar-
14 kets to ensure an efficient, secure, and transparent carbon
15 market, including oversight of spot markets and derivative
16 markets.

17 **SEC. 141. ENERGY AND ENVIRONMENTAL MARKETS ADVI-**
18 **SORY COMMITTEE.**

19 Section 2(a) of the Commodity Exchange Act (7
20 U.S.C. 2(a)) (as amended by section 117) is amended by
21 adding at the end the following:

22 “(15) ENERGY AND ENVIRONMENTAL MARKETS
23 ADVISORY COMMITTEE.—

24 “(A) ESTABLISHMENT.—

1 “(i) IN GENERAL.—An Energy and
2 Environmental Markets Advisory Com-
3 mittee is hereby established.

4 “(ii) MEMBERSHIP.—The Committee
5 shall have 9 members.

6 “(iii) ACTIVITIES.—The Committee’s
7 objectives and scope of activities shall be—

8 “(I) to conduct public meetings;

9 “(II) to submit reports and rec-
10 ommendations to the Commission (in-
11 cluding dissenting or minority views,
12 if any); and

13 “(III) otherwise to serve as a ve-
14 hicle for discussion and communica-
15 tion on matters of concern to ex-
16 changes, firms, end users, and regu-
17 lators regarding energy and environ-
18 mental markets and their regulation
19 by the Commission.

20 “(B) REQUIREMENTS.—

21 “(i) IN GENERAL.—The Committee
22 shall hold public meetings at such intervals
23 as are necessary to carry out the functions
24 of the Committee, but not less frequently
25 than 2 times per year.

1 “(ii) MEMBERS.—Members shall be
2 appointed to 3-year terms, but may be re-
3 moved for cause by vote of the Commis-
4 sion.

5 “(C) APPOINTMENT.—The Commission
6 shall appoint members with a wide diversity of
7 opinion and who represent a broad spectrum of
8 interests, including hedgers and consumers.

9 “(D) REIMBURSEMENT.—Members shall
10 be entitled to per diem and travel expense reim-
11 bursement by the Commission.

12 “(E) FACA.—The Committee shall not be
13 subject to the Federal Advisory Committee Act
14 (5 U.S.C. App.).”

15 **SEC. 142. EFFECTIVE DATE.**

16 Unless otherwise provided in this title, this title shall
17 take effect on the date that is 180 days after the date
18 of enactment of this Act.

19 **TITLE II—REGULATION OF SE-**
20 **CURITY-BASED SWAP MAR-**
21 **KETS**

22 **SEC. 201. DEFINITIONS UNDER THE SECURITIES EX-**
23 **CHANGE ACT OF 1934.**

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

1 (1) in subparagraphs (A) and (B) of paragraph
2 (5), by inserting “(but not security-based swaps,
3 other than security-based swaps with or for persons
4 that are not eligible contract participants)” after
5 “securities” each place that term appears;

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

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

22 (5) in paragraph (39)—

23 (A) by striking “or government securities
24 dealer” and adding “government securities
25 dealer, security-based swap dealer or major se-

1 security-based swap participant” in its place in
2 subparagraph (B)(i)(I);

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

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

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

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

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

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

1 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
2 PANT.—

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

6 “(i) maintains a substantial position
7 in security-based swaps for any of the
8 major security-based swap categories as
9 determined by the Commission, exclud-
10 ing—

11 “(I) positions held for hedging or
12 mitigating commercial risk; and

13 “(II) positions maintained by any
14 employee benefit plan (or any contract
15 held by such a plan) as defined in
16 paragraphs (2)(A) and (32) of section
17 3 of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C.
19 1002) for the primary purpose of
20 hedging or mitigating any risk directly
21 associated with the operation of the
22 plan; or

23 “(ii) whose outstanding security-based
24 swaps create substantial counterparty ex-
25 posure that could have serious adverse ef-

1 fects on the financial stability of the
2 United States banking system or financial
3 markets; or

4 “(iii)(I) is a financial entity that is
5 highly leveraged relative to the amount of
6 capital it holds; and

7 “(II) maintains a substantial position
8 in outstanding security-based swaps in any
9 major security-based swap category as de-
10 termined by the Commission.

11 “(iv) DEFINITION OF SUBSTANTIAL POSI-
12 TION.—For purposes of subparagraph (A), the
13 Commission shall define by rule or regulation
14 the term ‘substantial position’ at the threshold
15 that the Commission determines to be prudent
16 for the effective monitoring, management, and
17 oversight of entities that are systemically im-
18 portant or can significantly impact the financial
19 system of the United States.

20 “(v) SCOPE OF DESIGNATION.—For pur-
21 poses of subparagraph (A), a person may be
22 designated as a major security-based swap par-
23 ticipant for 1 or more categories of security-
24 based swaps without being classified as a major

1 security-based swap participant for all classes
2 of security-based swaps.

3 “(68) SECURITY-BASED SWAP.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘security-based
6 swap’ means any agreement, contract, or trans-
7 action that—

8 “(i) would be a swap under section
9 1a(35) of the Commodity Exchange Act;
10 and

11 “(ii) is based on—

12 “(I) an index that is a narrow-
13 based security index, including any in-
14 terest therein or on the value thereof;

15 “(II) a single security or loan, in-
16 cluding any interest therein or on the
17 value thereof; or

18 “(III) the occurrence, nonoccur-
19 rence, or extent of the occurrence of
20 an event relating to a single issuer of
21 a security or the issuers of securities
22 in a narrow-based security index, pro-
23 vided that such event directly affects
24 the financial statements, financial

1 condition, or financial obligations of
2 the issuer.

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

19 “(C) EXCLUSIONS.—The term ‘security-
20 based swap’ does not include any agreement,
21 contract, or transaction that meets the defini-
22 tion of a security-based swap only because it
23 references, is based upon, or settles through the
24 transfer, delivery, or receipt of an exempted se-
25 curity under paragraph (12), as in effect on the

1 date of enactment of the Futures Trading Act
2 of 1982 (other than any municipal security as
3 defined in paragraph (29) as in effect on the
4 date of enactment of the Futures Trading Act
5 of 1982), unless such agreement, contract, or
6 transaction is of the character of, or is com-
7 monly known in the trade as, a put, call, or
8 other option; or

9 “(D) MIXED SWAPS.—The term ‘security
10 based swap’ does not include any agreement,
11 contract, or transaction that is determined to
12 be a swap pursuant to paragraph (47)(F) of
13 section 1a of the Commodity Exchange Act (7
14 U.S.C. 1a).

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

18 “(70) PERSON ASSOCIATED WITH A SECURITY-
19 BASED SWAP DEALER OR MAJOR SECURITY-BASED
20 SWAP PARTICIPANT.—The term ‘person associated
21 with a security-based swap dealer or major security-
22 based swap participant’ or ‘associated person of a
23 security-based swap dealer or major security-based
24 swap participant’ means any partner, officer, direc-
25 tor, or branch manager of such security-based swap

1 dealer or major security-based swap participant (or
2 any person occupying a similar status or performing
3 similar functions), any person directly or indirectly
4 controlling, controlled by, or under common control
5 with such security-based swap dealer or major secu-
6 rity-based swap participant, or any employee of such
7 security-based swap dealer or major security-based
8 swap participant, except that any person associated
9 with a security-based swap dealer or major security-
10 based swap participant whose functions are solely
11 clerical or ministerial shall not be included in the
12 meaning of such term other than for purposes of
13 section 15F(e)(2).

14 “(71) SECURITY-BASED SWAP DEALER.—

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

17 “(i) holds itself out as a dealer in se-
18 curity-based swaps;

19 “(ii) makes a market in security-based
20 swaps;

21 “(iii) regularly engages in the pur-
22 chase and sale of security-based swaps in
23 the ordinary course of a business; or

24 “(iv) engages in any activity causing
25 it to be commonly known in the trade as

1 a dealer or market maker in security-based
2 swaps.

3 “(B) DESIGNATION BY TYPE OR CLASS.—

4 A person may be designated as a security-based
5 swap dealer for a single type or single class or
6 category of security-based swap or activities
7 and considered not to be a security-based swap
8 dealer for other types, classes, or categories of
9 security-based swaps or activities.

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

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

16 “(74) PRUDENTIAL REGULATOR.—The term
17 ‘prudential regulator’ has the same meaning as in
18 section 1a of the Commodity Exchange Act (7
19 U.S.C. 1a).

20 “(75) SWAP DATA REPOSITORY.—The term
21 ‘swap data repository’ means any person that col-
22 lects, calculates, prepares, or maintains information
23 or records with respect to transactions or positions
24 in, or the terms and conditions of, security-based
25 swaps entered into by third parties.

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

4 “(77) SWAP EXECUTION FACILITY.—The term
5 ‘swap execution facility’ means a trading facility in
6 which multiple participants have the ability to exe-
7 cute or trade security-based swaps by accepting bids
8 and offers made by other participants that are open
9 to multiple participants in the facility or system, or
10 confirmation facility, that—

11 “(A) facilitates the execution of security-
12 based swaps between persons; and

13 “(B) is not a designated contract market.

14 “(78) BROAD-BASED SECURITY INDEX.—The
15 term ‘broad-based security index’ has the same
16 meaning as in section 1a of the Commodity Ex-
17 change Act (7 U.S.C. 1a).”.

18 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
19 Securities and Exchange Commission may, by rule, fur-
20 ther define the terms “security-based swap”, “security-
21 based swap dealer”, “major security-based swap partici-
22 pant”, and “eligible contract participant” with regard to
23 security-based swaps (as such terms are defined in the
24 amendments made by subsection (a)) for the purpose of
25 including transactions and entities that have been struc-

1 tured to evade this title or the amendments made by this
2 title.

3 (c) OTHER INCORPORATED DEFINITIONS.—Except
4 as the context otherwise requires, in this title, the terms
5 “prudential regulator”, “swap”, “swap dealer”, “major
6 swap participant”, “swap data repository”, “associated
7 person of a swap dealer or major swap participant”, “eligi-
8 ble contract participant”, “swap execution facility”,
9 “broad-based security index”, “security-based swap”, “se-
10 curity-based swap dealer”, “major security-based swap
11 participant”, “swap data repository”, and “associated per-
12 son of a security-based swap dealer or major security-
13 based swap participant” have the same meanings as in
14 section 1a of the Commodity Exchange Act (7 U.S.C. 1a),
15 as amended by this Act.

16 **SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SE-**
17 **CURITY-BASED SWAP AGREEMENTS.**

18 (a) REPEAL.—Sections 206A, 206B, and 206C of the
19 Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C.
20 78c note) are repealed.

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

23 (1) Section 2A of the Securities Act of 1933
24 (15 U.S.C. 77b-1) is repealed.

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

3 (A) in subsection (a)—

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

6 (ii) by striking “or any security-based
7 swap agreement (as defined in Section
8 206B of the Gramm-Leach-Bliley Act)”;
9 and

10 (B) by striking subsection (d).

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

14 (1) by striking section 3A (15 U.S.C. 78c–1);

15 and

16 (2) in section 9 (15 U.S.C. 78i(a))—

17 (A) in subsection (a), by striking para-
18 graphs (2) through (5) and inserting the fol-
19 lowing:

20 “(2) To effect, alone or with one or more other per-
21 sons, a series of transactions in any security registered
22 on a national securities exchange or in connection with
23 any security-based swap with respect to such security cre-
24 ating actual or apparent active trading in such security,
25 or raising or depressing the price of such security, for the

1 purpose of inducing the purchase or sale of such security
2 by others.

3 “(3) If a dealer, broker, security-based swap dealer,
4 major security-based swap participant, or other person
5 selling or offering for sale or purchasing or offering to
6 purchase the security, or a security-based swap with re-
7 spect to such security, to induce the purchase or sale of
8 any security registered on a national securities exchange
9 or any security-based swap with respect to such security
10 by the circulation or dissemination in the ordinary course
11 of business of information to the effect that the price of
12 any such security will or is likely to rise or fall because
13 of market operations of any one or more persons con-
14 ducted for the purpose of raising or depressing the price
15 of such security.

16 “(4) If a dealer, broker, security-based swap dealer,
17 major security-based swap participant, or other person
18 selling or offering for sale or purchasing or offering to
19 purchase the security, or a security-based swap with re-
20 spect to such security, to make, regarding any security
21 registered on a national securities exchange or any secu-
22 rity-based swap with respect to such security, for the pur-
23 pose of inducing the purchase or sale of such security or
24 such security-based swap, any statement which was at the
25 time and in the light of the circumstances under which

1 it was made, false or misleading with respect to any mate-
2 rial fact, and which that person knew or had reasonable
3 ground to believe was so false or misleading.

4 “(5) For a consideration, received directly or indi-
5 rectly from a broker, dealer, security-based swap dealer,
6 major security-based swap participant, or other person
7 selling or offering for sale or purchasing or offering to
8 purchase the security, or a security-based swap with re-
9 spect to such security, to induce the purchase of any secu-
10 rity registered on a national securities exchange or any
11 security-based swap with respect to such security by the
12 circulation or dissemination of information to the effect
13 that the price of any such security will or is likely to rise
14 or fall because of the market operations of any one or
15 more persons conducted for the purpose of raising or de-
16 pressing the price of such security.”;

17 (3) by striking subsection (i);

18 (4) in section 10 (15 U.S.C. 78j), by striking
19 “or any securities-based swap agreement (as defined
20 in section 206B of the Gramm-Leach-Bliley Act)”
21 and by striking the matter following subsection (b);

22 (5) in section 15 (15 U.S.C. 78o)—

23 (A) in subsection (c)(1)(A), by striking “or
24 any security-based swap agreement (as defined

1 in section 206B of the Gramm-Leach-Bliley
2 Act),”;

3 (B) in subparagraphs (B) and (C) of sub-
4 section (e)(1), by striking “or any security-
5 based swap agreement (as defined in section
6 206B of the Gramm-Leach-Bliley Act)” in each
7 place that the phrase appears; and

8 (C) by striking subsection (i);
9 (6) in section 16 (15 U.S.C. 78p)—

10 (A) in subsection (a)(2)(C), by striking “or
11 if such person shall have purchased or sold a
12 security-based swap agreement (as defined in
13 section 206(b) of the Gramm-Leach-Bliley Act
14 (15 U.S.C. 78e note)) involving such equity se-
15 curity,”;

16 (B) in subsection (a)(3)(B), by striking “,
17 and such purchases and sales of the security-
18 based swap agreements” and inserting the word
19 “and” before the word “any”;

20 (C) in the first sentence of subsection (b),
21 by striking “or a security-based swap agree-
22 ment (as defined in section 206B of the
23 Gramm-Leach-Bliley Act) involving any such
24 equity security” and by striking “or security-

1 based swap agreement” in each place that the
2 phrase appears;

3 (D) in the third sentence of subsection (b),
4 by striking “or security-based swap agreement
5 (as defined in section 206B of the Gramm-
6 Leach Bliley Act)”; and

7 (E) by striking subsection (g);
8 (7) in section 20 (15 U.S.C. 78t)—

9 (A) in subsection (d), by striking “or secu-
10 rity-based swap agreement (as defined in sec-
11 tion 206B of the Gramm-Leach-Bliley Act)”
12 and inserting “or” before the word “privilege”;
13 and

14 (B) by striking subsection (f); and
15 (8) in section 21A (15 U.S.C. 78u-1)—

16 (A) in subsection (a)(1), by striking “or
17 security-based swap agreement (as defined in
18 section 206B of the Gramm-Leach-Bliley Act)”;
19 and

20 (B) by striking subsection (g).

21 **SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE**

22 **ACT OF 1934.**

23 (a) **CLEARING FOR SECURITY-BASED SWAPS.**—The
24 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
25 is amended by inserting after section 3A:

1 **“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

2 “(a) CLEARING REQUIREMENT.—

3 “(1) OPEN ACCESS.—Each clearing agency reg-
4 istered under this title (in this section referred to as
5 a ‘registered clearing agency’) shall—

6 “(A) prescribe that all security-based
7 swaps with the same terms and conditions are
8 economically equivalent and may be offset with
9 each other within the registered clearing agen-
10 cy; and

11 “(B) provide for nondiscriminatory clear-
12 ing of a security-based swap executed bilaterally
13 or on or through the rules of an unaffiliated na-
14 tional securities exchange or swap execution fa-
15 cility.

16 “(2) SECURITY-BASED SWAPS SUBJECT TO
17 MANDATORY CLEARING REQUIREMENT.—

18 “(A) IN GENERAL.—In accordance with
19 subparagraph (C), the Commission shall, con-
20 sistent with the public interest, adopt rules
21 under the expedited process described in sub-
22 paragraph (B) to establish criteria for deter-
23 mining that a security-based swap, or any
24 group, category, type, or class of security-based
25 swap is required to be cleared.

1 “(B) EXPEDITED RULEMAKING AUTHOR-
2 ITY.—

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

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

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

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

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

22 “(i) the volume and open interest of
23 transactions;

24 “(ii) as compared to other agree-
25 ments, contracts, or transactions that are

1 centrally cleared, whether any material dif-
2 ferences exist;

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

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

8 “(D) COMMISSION REVIEW OF NEW SECUR-
9 RITY-BASED SWAPS.—The Commission—

10 “(i) shall review each security-based
11 swap, or any group, category, type, or class
12 of security-based swap for which a reg-
13 istered clearing agency notifies the Com-
14 mission that the registered clearing agency
15 plans to list for clearing after the date of
16 enactment of this subsection (‘new secu-
17 rity-based swap’);

18 “(ii) may review any security-based
19 swap, or any group, category, type, or class
20 of security-based swap that—

21 “(I) is not currently listed or pro-
22 posed by a registered clearing agency;
23 and

24 “(II) the Commission determines
25 to be appropriate for review;

1 “(iii) shall determine by order whether
2 the new security-based swap, or group, cat-
3 egory, type, or class of security-based
4 swaps being listed for clearing is required
5 to be cleared based on the criteria estab-
6 lished in the rule adopted by the Commis-
7 sion under subparagraph (A);

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

15 “(v) not later than 90 days after the
16 date on which a registered clearing agency
17 certifies to the Commission that the reg-
18 istered clearing agency will list, or receives
19 approval from the Commission to list, the
20 new security-based swap, or group, cat-
21 egory, type, or class of security-based
22 swaps for clearing, shall make a deter-
23 mination under clause (iii).

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

1 agency described in that subparagraph to list
2 for permissive clearing any security-based swap,
3 or group, category, type, or class of security-
4 based swaps.

5 “(F) MANDATORY CLEARING.—

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

11 “(ii) REQUIREMENTS.—The security-
12 based swap shall be submitted for clearing
13 if—

14 “(I) the security-based swap
15 meets the criteria of the rules adopted
16 by the Commission pursuant to sub-
17 paragraph (A);

18 “(II) the Commission determines
19 by order that—

20 “(aa) an existing security-
21 based swap or group, category,
22 type, or class of security-based
23 swaps listed for clearing by a
24 registered clearing agency as of
25 the date of enactment of this

1 subparagraph is required to be
2 cleared; or

3 “(bb) a new security-based
4 swap or group, category, type, or
5 class of security-based swaps sub-
6 mitted under subparagraph (D)
7 is required to be cleared; and

8 “(III) the security-based swap is
9 listed for clearing by a registered
10 clearing agency.

11 “(G) PREVENTION OF EVASION.—

12 “(i) IN GENERAL.—The Commission
13 may prescribe rules under this subsection
14 (and issue interpretations of rules pre-
15 scribed under this subsection) as deter-
16 mined by the Commission to be necessary
17 to prevent evasions of the mandatory clear-
18 ing requirements under this title.

19 “(ii) DUTY OF COMMISSION TO INVES-
20 TIGATE AND TAKE CERTAIN ACTIONS.—To
21 the extent the Commission finds that a
22 particular security-based swap, group, cat-
23 egory, type, or class of security-based
24 swaps would otherwise be subject to man-
25 datory clearing but no registered clearing

1 agency has listed the security-based swap,
2 group, category, type, or class of security-
3 based swaps for clearing, the Commission
4 shall—

5 “(I) investigate the facts and cir-
6 cumstances surrounding the situation;
7 and

8 “(II) issue a public report re-
9 garding the security-based swap in
10 question and take such actions as the
11 Commission determines to be nec-
12 essary and in the public interest.

13 “(H) STAY OF CLEARING REQUIRE-
14 MENT.—

15 “(i) IN GENERAL.—The Commission
16 may, on its own initiative or upon applica-
17 tion of a counterparty to a security-based
18 swap, stay the mandatory clearing require-
19 ment described in subparagraph (F) until
20 the date on which the Commission com-
21 pletes a review of—

22 “(I) the terms of the security-
23 based swap or the group, category,
24 type, or class of security-based swaps;
25 and

1 “(II) the clearing arrangement.

2 “(ii) DEADLINE.—Not later than 30
3 days after the date on which the Commis-
4 sion issues a stay under clause (i), the
5 Commission shall make a determination in
6 accordance with clause (iii).

7 “(iii) DETERMINATION.—Upon com-
8 pletion of the review carried out under
9 clause (i), the Commission may—

10 “(I) determine, unconditionally
11 or subject to such terms and condi-
12 tions as the Commission determines to
13 be appropriate, that the security-
14 based swap, or group, category, type,
15 or class of security-based swaps, must
16 be cleared pursuant to this subsection;
17 or

18 “(II) determine that the clearing
19 mandate described in subparagraph
20 (F) shall not apply to the security-
21 based swap, group, category, type, or
22 class of security-based swaps.

23 “(3) END USER CLEARING EXEMPTION.—

24 “(A) DEFINITION OF COMMERCIAL END
25 USER.—

1 in section 1a of the Commodity Ex-
2 change Act (7 U.S.C. 1a); or

3 “(IV) a person that is registered
4 or required to be registered with the
5 Commission.

6 “(B) END USER CLEARING EXEMPTION.—

7 “(i) IN GENERAL.—Subject to clause
8 (ii), in the event that a security-based
9 swap is subject to the mandatory clearing
10 requirement under paragraph (2), and 1 of
11 the counterparties to the security-based
12 swap is a commercial end user that
13 counterparty—

14 “(I)(aa) may elect not to clear
15 the security-based swap, as required
16 under paragraph (2); or

17 “(bb) may elect to require clear-
18 ing of the security-based swap; and

19 “(II) if the end user makes an
20 election under subclause (I)(bb), shall
21 have the sole right to select the clear-
22 ing agency at which the security-based
23 swap will be cleared.

24 “(ii) LIMITATION.—A commercial end
25 user may only make an election under

1 clause (i) if the end user is using the secu-
2 rity-based swap to hedge commercial risk.

3 “(C) TREATMENT OF AFFILIATES.—

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

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

16 “(I) a security-based swap dealer;

17 “(II) a security-based security-
18 based swap dealer;

19 “(III) a major security-based
20 swap participant;

21 “(IV) a major security-based se-
22 curity-based swap participant;

23 “(V) an issuer that would be an
24 investment company, as defined in
25 section 3 of the Investment Company

1 Act of 1940 (15 U.S.C. 80a–3), but
2 for paragraph (1) or (7) of subsection
3 (c) of that section 3 (15 U.S.C. 80a–
4 3(c));

5 “(VI) a commodity pool;

6 “(VII) a bank holding company
7 with over \$50,000,000,000 in consoli-
8 dated assets; or

9 “(VIII) an affiliate of any entity
10 described in subclauses (I) through
11 (VII).

12 “(iii) ABUSE OF EXEMPTION.—The
13 Commission may prescribe such rules, or
14 issue interpretations of the rules, as the
15 Commission determines to be necessary to
16 prevent abuse of the exemption described
17 in subparagraph (B).

18 “(D) OPTION TO CLEAR.—With respect to
19 any security-based swap listed for clearing by a
20 clearing agency and entered into by a security-
21 based swap dealer or a major security-based
22 swap participant with any other counterparty,
23 the counterparty—

24 “(i) may elect to require clearing of
25 the security-based swap; and

1 “(ii) if the counterparty makes an
2 election under clause (i), shall have the
3 sole right to select the clearing agency at
4 which the security-based swap will be
5 cleared.

6 “(b) AUDIT COMMITTEE APPROVAL.—Exemptions
7 from the requirements of this section to clear or trade a
8 security-based swap through a national securities ex-
9 change or security-based swap execution facility shall be
10 available to a counterparty that is an issuer of securities
11 that are registered under section 12 or that is required
12 to file reports pursuant to section 15(d), only if the
13 issuer’s audit committee has reviewed and approved its de-
14 cision to enter into security-based swaps that are subject
15 to such exemptions.

16 “(c) PUBLIC AVAILABILITY OF SECURITY-BASED
17 SWAP TRANSACTION DATA.—

18 “(1) IN GENERAL.—

19 “(A) DEFINITION OF REAL-TIME PUBLIC
20 REPORTING.—In this paragraph, the term ‘real-
21 time public reporting’ means to report data re-
22 lating to a security-based swap transaction as
23 soon as technologically practicable after the
24 time at which the security-based swap trans-
25 action has been executed.

1 “(B) PURPOSE.—The purpose of this sec-
2 tion is to authorize the Commission to make se-
3 curity-based swap transaction and pricing data
4 available to the public in such form and at such
5 times as the Commission determines appro-
6 priate to enhance price discovery.

7 “(C) GENERAL RULE.—The Commission is
8 authorized to provide by rule for the public
9 availability of security-based swap transaction
10 and pricing data as follows:

11 “(i) With respect to those security-
12 based swaps that are subject to the man-
13 datory clearing requirement described in
14 subsection (a)(2) (including those security-
15 based swaps that are exempted from those
16 requirements), the Commission shall re-
17 quire real-time public reporting for such
18 transactions.

19 “(ii) With respect to those security-
20 based swaps that are not subject to the
21 mandatory clearing requirement described
22 in subsection (a)(2), but are cleared at a
23 registered clearing agency, the Commission
24 shall require real-time public reporting for
25 such transactions.

1 “(iii) With respect to security-based
2 swaps that are not cleared at a registered
3 clearing agency and which are reported to
4 a swap data repository or the Commission
5 under subsection (a), the Commission shall
6 make available to the public, in a manner
7 that does not disclose the business trans-
8 actions and market positions of any per-
9 son, aggregate data on such security-based
10 swap trading volumes and positions.

11 “(D) REGISTERED ENTITIES AND PUBLIC
12 REPORTING.—The Commission may require
13 registered entities to publicly disseminate the
14 security-based swap transaction and pricing
15 data required to be reported under this para-
16 graph.

17 “(E) RULEMAKING REQUIRED.—With re-
18 spect to the rule providing for the public avail-
19 ability of transaction and pricing data for secu-
20 rity-based swaps described in clauses (i) and (ii)
21 of subparagraph (C), the rule promulgated by
22 the Commission shall contain provisions—

23 “(i) to ensure such information does
24 not identify the participants;

1 “(ii) to specify the criteria for deter-
2 mining what constitutes a large notional
3 security-based swap transaction (block
4 trade) for particular markets and con-
5 tracts;

6 “(iii) to specify the appropriate time
7 delay for reporting large notional security-
8 based swap transactions (block trades) to
9 the public; and

10 “(iv) that take into account whether
11 the public disclosure will materially reduce
12 market liquidity.

13 “(F) TIMELINESS OF REPORTING.—Par-
14 ties to a security-based swap (including agents
15 of the parties to a security-based swap) shall be
16 responsible for reporting security-based swap
17 transaction information to the appropriate reg-
18 istered entity in a timely manner as may be
19 prescribed by the Commission.

20 “(2) SEMIANNUAL AND ANNUAL PUBLIC RE-
21 PORTING OF AGGREGATE SECURITY-BASED SWAP
22 DATA.—

23 “(A) IN GENERAL.—In accordance with
24 subparagraph (B), the Commission shall issue a
25 written report on a semiannual and annual

1 basis to make available to the public informa-
2 tion relating to—

3 “(i) the trading and clearing in the
4 major security-based swap categories; and

5 “(ii) the market participants and de-
6 velopments in new products.

7 “(B) USE; CONSULTATION.—In preparing
8 a report under subparagraph (A), the Commis-
9 sion shall—

10 “(i) use information from security-
11 based swap data repositories and clearing
12 agencies; and

13 “(ii) consult with the Office of the
14 Comptroller of the Currency, the Bank for
15 International Settlements, and such other
16 regulatory bodies as may be necessary.

17 “(C) TRANSITION RULE FOR
18 PREENACTMENT SECURITY-BASED SWAPS.—

19 “(i) SECURITY-BASED SWAPS EN-
20 TERED INTO BEFORE THE DATE OF EN-
21 ACTMENT OF THE WALL STREET TRANS-
22 PARENCY AND ACCOUNTABILITY ACT OF
23 2010.—Each security-based swap entered
24 into before the date of enactment of the
25 Wall Street Transparency and Account-

1 ability Act of 2010, the terms of which
2 have not expired as of the date of enact-
3 ment of that Act, shall be reported to a
4 registered swap data repository or the
5 Commission by a date that is not later
6 than—

7 “(I) 30 days after the date of
8 issuance of the interim final rule; or

9 “(II) such other period as the
10 Commission determines to be appro-
11 priate.

12 “(ii) COMMISSION RULEMAKING.—The
13 Commission shall promulgate an interim
14 final rule within 90 days of the date of en-
15 actment of this section providing for the
16 reporting of each security-based swap en-
17 tered into before the date of enactment as
18 referenced in clause (i).

19 “(D) EFFECTIVE DATE.—The reporting
20 provisions described in this paragraph shall be
21 effective upon the date of enactment of this sec-
22 tion.

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

1 “(1) IN GENERAL.—Each registered clearing
2 agency and security-based swap execution facility
3 shall designate an individual to serve as a chief com-
4 pliance officer.

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

7 “(A) report directly to its board or to the
8 senior officer;

9 “(B) review its compliance with respect to
10 the core principles described in this title;

11 “(C) in consultation with its board, a body
12 performing a function similar thereto, or the
13 senior officer of the registered clearing agency,
14 resolve any conflicts of interest that may arise;

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

18 “(E) ensure compliance with this title (in-
19 cluding regulations issued under this title) re-
20 lating to agreements, contracts, or transactions,
21 including each rule prescribed by the Commis-
22 sion under this section;

23 “(F) establish procedures for the remedi-
24 ation of noncompliance issues identified by the
25 compliance officer through any—

- 1 “(i) compliance office review;
- 2 “(ii) look-back;
- 3 “(iii) internal or external audit find-
- 4 ing;
- 5 “(iv) self-reported error; or
- 6 “(v) validated complaint; and

7 “(G) establish and follow appropriate pro-

8 cedures for the handling, management response,

9 remediation, retesting, and closing of non-

10 compliance issues.

11 “(3) ANNUAL REPORTS.—

12 “(A) IN GENERAL.—In accordance with

13 rules prescribed by the Commission, the chief

14 compliance officer shall annually prepare and

15 sign a report that contains a description of—

16 “(i) the compliance of the registered

17 clearing agency or security-based swap exe-

18 cution facility of the compliance officer

19 with respect to this title (including regula-

20 tions under this title); and

21 “(ii) each policy and procedure of the

22 registered clearing agency of the compli-

23 ance officer (including the code of ethics

24 and conflict of interest policies of the reg-

25 istered clearing agency).

1 “(B) REQUIREMENTS.—A compliance re-
2 port under subparagraph (A) shall—

3 “(i) accompany each appropriate fi-
4 nancial report of the registered clearing
5 agency that is required to be furnished to
6 the Commission pursuant to this section;
7 and

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

11 (b) CLEARING AGENCY REQUIREMENTS.—Section
12 17A of the Securities Exchange Act of 1934 (15 U.S.C.
13 78q) is amended by adding at the end the following new
14 subsections:

15 “(g) REGISTRATION REQUIREMENT.—It shall be un-
16 lawful for a clearing agency, unless registered with the
17 Commission, directly or indirectly to make use of the mails
18 or any means or instrumentality of interstate commerce
19 to perform the functions of a clearing agency with respect
20 to a security-based swap.

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

1 “(i) STANDARDS FOR CLEARING AGENCIES CLEAR-
2 ING SWAP TRANSACTIONS.—To be registered and to main-
3 tain registration as a clearing agency that clears swap
4 transactions, a clearing agency shall comply with such
5 standards as the Commission may establish by rule. In
6 establishing any such standards, and in the exercise of its
7 oversight of such a clearing agency pursuant to this title,
8 the Commission may conform such standards or oversight
9 to reflect evolving United States and international stand-
10 ards. Except where the Commission determines otherwise
11 by rule or regulation, a clearing agency shall have reason-
12 able discretion in establishing the manner in which it com-
13 plies with any such standards.

14 “(j) RULES.—The Commission shall adopt rules gov-
15 erning persons that are registered as clearing agencies for
16 security-based swaps under this title.

17 “(k) EXEMPTIONS.—

18 “(1) IN GENERAL.—The Commission may ex-
19 empt, conditionally or unconditionally, a clearing
20 agency from registration under this section for the
21 clearing of security-based swaps if the Commission
22 determines that the clearing agency is subject to
23 comparable, comprehensive supervision and regula-
24 tion by the Commodity Futures Trading Commission

1 or the appropriate government authorities in the
2 home country of the agency.

3 “(2) DERIVATIVES CLEARING ORGANIZA-
4 TIONS.—A person that is required to be registered
5 as a derivatives clearing organization under the
6 Commodity Exchange Act, whose principal business
7 is clearing commodity futures and options on com-
8 modity futures transactions and swaps and which is
9 a derivatives clearing organization registered with
10 the Commodity Futures Trading Commission under
11 the Commodity Exchange Act (7 U.S.C. 1 et seq.),
12 shall be unconditionally exempt from registration
13 under this section solely for the purpose of clearing
14 security-based swaps, unless the Commission finds
15 that such derivatives clearing organization is not
16 subject to comparable, comprehensive supervision
17 and regulation by the Commodity Futures Trading
18 Commission.”.

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

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

23 “(a) EXECUTION TRANSPARENCY.—A security-based
24 swap that is subject to the clearing requirement of section
25 3B shall not be traded except on or through a national

1 securities exchange or on or through an swap execution
2 facility registered under section 5h, that makes the secu-
3 rity-based swap available for trading.

4 “(b) EXCEPTIONS.—The requirement of subsection
5 (a) shall not apply to a security-based swap if no national
6 securities exchange or swap execution facility makes the
7 security-based swap available for trading.

8 “(c) REQUIRED REPORTING.—If the exception of
9 subsection (b) applies, and there is no national securities
10 exchange or security-based swap execution facility that
11 makes the security-based security-based swap available to
12 trade, the counterparties shall comply with any record-
13 keeping and transaction reporting requirements as may be
14 prescribed by the Commission with respect to security-
15 based security-based swaps subject to the requirements of
16 subsection (a).”.

17 (d) SECURITY-BASED SWAP EXECUTION FACILI-
18 TIES.—The Securities Exchange Act of 1934 (15 U.S.C.
19 78a et seq.) is amended by inserting after section 3B (as
20 added by subsection (a) of this section) the following:

21 **“SEC. 3C. SWAP EXECUTION FACILITIES.**

22 “(a) REGISTRATION.—

23 “(1) IN GENERAL.—No person may operate a
24 facility for the trading or processing of security-
25 based swaps, unless the facility is registered as a

1 swap execution facility or as a national securities ex-
2 change under this section.

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
7 Commodity Futures Trading Commission as a swap
8 execution 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 security-
13 based swap; and

14 “(2) facilitate trade processing of any security-
15 based swap.

16 “(c) TRADING BY CONTRACT MARKETS.—A board of
17 trade that operates a contract market shall, to the extent
18 that the board of trade also operates a swap execution fa-
19 cility and uses the same electronic trade execution system
20 for trading on the national securities exchange and the
21 swap execution facility, identify whether the electronic
22 trading is taking place on the national securities exchange
23 or the swap execution facility.

24 “(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
25 CILITIES.—

1 “(1) COMPLIANCE WITH CORE PRINCIPLES.—

2 “(A) IN GENERAL.—To be registered, and
3 maintain registration, as a swap execution facil-
4 ity, the swap execution facility shall comply
5 with—

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

8 “(ii) any requirement that the Com-
9 mission may impose by rule or regulation.

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 security-based swaps traded or processed

1 on or through the swap execution facility;

2 and

3 “(ii) any limitation on access to the
4 swap execution facility;

5 “(B) establish and enforce trading, trade
6 processing, and participation rules that will
7 deter abuses and have the capacity to detect,
8 investigate, and enforce those rules, including
9 means—

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

12 “(ii) to capture information that may
13 be used in establishing whether rule viola-
14 tions have occurred;

15 “(C) establish rules governing the oper-
16 ation of the facility, including rules specifying
17 trading procedures to be used in entering and
18 executing orders traded or posted on the facil-
19 ity, including block trades; and

20 “(D) provide by its rules that when a secu-
21 rity-based swap dealer or major security-based
22 swap participant enters into or facilitates a se-
23 curity-based swap that is subject to the manda-
24 tory clearing requirement of section
25 3B(a)(2)(F), the security-based swap dealer or

1 major security-based swap participant shall be
2 responsible for compliance with the execution
3 transparency requirement of section 5A(a).

4 “(3) SECURITY-BASED SWAPS NOT READILY
5 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
6 tion facility shall permit trading only in security-
7 based swaps that are not readily susceptible to ma-
8 nipulation.

9 “(4) MONITORING OF TRADING AND TRADE
10 PROCESSING.—The swap execution facility shall—

11 “(A) establish and enforce rules or terms
12 and conditions defining, or specifications detail-
13 ing—

14 “(i) trading procedures to be used in
15 entering and executing orders traded on or
16 through the facilities of the swap execution
17 facility; and

18 “(ii) procedures for trade processing
19 of security-based swaps on or through the
20 facilities of the swap execution facility; and

21 “(B) monitor trading in security-based
22 swaps to prevent manipulation, price distortion,
23 and disruptions of the delivery or cash settle-
24 ment process through surveillance, compliance,
25 and disciplinary practices and procedures, in-

1 including methods for conducting real-time moni-
2 toring of trading and comprehensive and accu-
3 rate trade reconstructions.

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

6 “(A) establish and enforce rules that will
7 allow the facility to obtain any necessary infor-
8 mation to perform any of the functions de-
9 scribed in this subsection;

10 “(B) provide the information to the Com-
11 mission on request; and

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

15 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

16 “(A) IN GENERAL.—To reduce the poten-
17 tial threat of market manipulation or conges-
18 tion, especially during trading in the delivery
19 month, a **【swap execution facility】** that is a
20 trading facility shall adopt for each of the con-
21 tracts of the facility, as is necessary and appro-
22 priate, position limitations or position account-
23 ability for speculators.

24 “(B) POSITION LIMITS.—For any contract
25 that is subject to a position limitation estab-

1 lished by the Commission pursuant to section
2 4a(a), the security-based swap execution facility
3 shall set its position limitation at a level no
4 higher than the Commission limitation.

5 “(C) POSITION ENFORCEMENT.—For any
6 contract that is subject to a position limitation
7 established by the Commission pursuant to sec-
8 tion 4a(a), a swap execution facility shall reject
9 any proposed security-based swap transaction
10 if, based on information readily available to a
11 swap execution facility, any proposed security-
12 based swap transaction would cause a swap exe-
13 cution facility customer that would be a party
14 to such swap transaction to exceed such posi-
15 tion limitation.

16 “(7) FINANCIAL INTEGRITY OF TRANS-
17 ACTIONS.—The swap execution facility shall estab-
18 lish and enforce rules and procedures for ensuring
19 the financial integrity of security-based swaps en-
20 tered on or through the facilities of the security-
21 based swap execution facility, including the clearance
22 and settlement of the security-based swaps pursuant
23 to section 2(h)(1).

24 “(8) EMERGENCY AUTHORITY.—The swap exe-
25 cution facility shall adopt rules to provide for the ex-

1 exercise of emergency authority, in consultation or co-
2 operation with the Commission, as is necessary and
3 appropriate, including the authority to liquidate or
4 transfer open positions in any security-based swap
5 or to suspend or curtail trading in a security-based
6 swap.

7 “(9) TIMELY PUBLICATION OF TRADING INFOR-
8 MATION.—

9 “(A) IN GENERAL.—The swap execution
10 facility shall make public timely information on
11 price, trading volume, and other trading data
12 on security-based swaps to the extent prescribed
13 by the Commission.

14 “(B) CAPACITY OF SWAP EXECUTION FA-
15 CILITY.—The swap execution facility shall be
16 required to have the capacity to electronically
17 capture trade information with respect to trans-
18 actions executed on the facility.

19 “(10) RECORDKEEPING AND REPORTING.—

20 “(A) IN GENERAL.—A swap execution fa-
21 cility shall—

22 “(i) maintain records of all activities
23 relating to the business of the facility, in-
24 cluding a complete audit trail, in a form

1 and manner acceptable to the Commission
2 for a period of 5 years; and

3 “(ii) report to the Commission, in a
4 form and manner acceptable to the Com-
5 mission, such information as the Commis-
6 sion determines to be necessary or appro-
7 priate for the Commission to perform the
8 duties of the Commission under this title.

9 “(B) REQUIREMENTS.—The Commission
10 shall adopt data collection and reporting re-
11 quirements for swap execution facilities that are
12 comparable to corresponding requirements for
13 clearing agencies and swap data repositories.

14 “(11) ANTITRUST CONSIDERATIONS.—Unless
15 necessary or appropriate to achieve the purposes of
16 this title, the swap execution facility shall avoid—

17 “(A) adopting any rules or taking any ac-
18 tions that result in any unreasonable restraint
19 of trade; or

20 “(B) imposing any material anticompeti-
21 tive burden on trading or clearing.

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

1 “(A) establish and enforce rules to mini-
2 mize conflicts of interest in its decisionmaking
3 process; and

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

6 “(13) FINANCIAL RESOURCES.—

7 “(A) IN GENERAL.—The swap execution
8 facility shall have adequate financial, oper-
9 ational, and managerial resources to discharge
10 each responsibility of the swap execution facil-
11 ity.

12 “(B) DETERMINATION OF RESOURCE ADE-
13 QUACY.—The financial resources of a swap exe-
14 cution facility shall be considered to be ade-
15 quate if the value of the financial resources ex-
16 ceeds the total amount that would enable the
17 swap execution facility to cover the operating
18 costs of the swap execution facility for a 1-year
19 period, as calculated on a rolling basis.

20 “(14) SYSTEM SAFEGUARDS.—The swap execu-
21 tion facility shall—

22 “(A) establish and maintain a program of
23 risk analysis and oversight to identify and mini-
24 mize sources of operational risk, through the

1 development of appropriate controls and proce-
2 dures, and automated systems, that—

3 “(i) are reliable and secure; and

4 “(ii) have adequate scalable capacity;

5 “(B) establish and maintain emergency
6 procedures, backup facilities, and a plan for dis-
7 aster recovery that are designed to allow for—

8 “(i) the timely recovery and resump-
9 tion of operations; and

10 “(ii) the fulfillment of the responsibil-
11 ities and obligation of the swap execution
12 facility; and

13 “(C) periodically conduct tests to verify
14 that the backup resources of the swap execution
15 facility are sufficient to ensure continued—

16 “(i) order processing and trade
17 matching;

18 “(ii) price reporting;

19 “(iii) market surveillance and

20 “(iv) maintenance of a comprehensive
21 and accurate audit trail.

22 “(15) DESIGNATION OF CHIEF COMPLIANCE
23 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 title
20 and the rules and regulations issued under
21 this title, 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 title; and

18 “(II) the policies and procedures,
19 including the code of ethics and con-
20 flict of interest policies, of the secu-
21 rity-based swap 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 Commodity Futures Trading Commission.

14 “(f) RULES.—The Commission shall prescribe rules
15 governing the regulation of swap execution facilities under
16 this section.”.

17 (e) SEGREGATION OF ASSETS HELD AS COLLATERAL
18 IN SECURITY-BASED SWAP TRANSACTIONS.—The Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
20 amended by inserting after section 3C (as added by sub-
21 section (b)) the following:

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

24 “(a) REGISTRATION REQUIREMENT.—It shall be un-
25 lawful for any person to accept any money, securities, or

1 property (or to extend any credit in lieu of money, securi-
2 ties, or property) from, for, or on behalf of a security-
3 based swaps customer or to margin, guarantee, or secure
4 a security-based swap cleared by or through a clearing
5 agency (including money, securities, or property accruing
6 to the customer as the result of such a security-based
7 swap), unless the person shall have registered under this
8 title with the Commission as a broker, dealer, or security-
9 based swap dealer, and the registration shall not have ex-
10 pired nor been suspended nor revoked.

11 “(b) CLEARED SECURITY-BASED SWAPS.—

12 “(1) SEGREGATION REQUIRED.—A broker,
13 dealer, or security-based swap dealer shall treat and
14 deal with all money, securities, and property of any
15 security-based swaps customer received to margin,
16 guarantee, or secure a security-based swap cleared
17 by or through a clearing agency (including money, se-
18 curities, or property accruing to the security-based
19 swaps customer as the result of such a security-
20 based swap) as belonging to the security-based
21 swaps customer.

22 “(2) COMMINGLING PROHIBITED.—Money, se-
23 curities, and property of a security-based swaps cus-
24 tomer described in paragraph (1) shall be separately
25 accounted for and shall not be commingled with the

1 funds of the broker, dealer, or security-based swap
2 dealer or be used to margin, secure, or guarantee
3 any trades or contracts of any security-based swaps
4 customer or person other than the person for whom
5 the same are held.

6 “(c) EXCEPTIONS.—

7 “(1) USE OF FUNDS.—

8 “(A) IN GENERAL.—Notwithstanding sub-
9 section (b), money, securities, and property of a
10 security-based swaps customer of a broker,
11 dealer, or security-based swap dealer described
12 in subsection (b) may, for convenience, be com-
13 mingled and deposited in the same 1 or more
14 accounts with any bank or trust company or
15 with a clearing agency.

16 “(B) WITHDRAWAL.—Notwithstanding
17 subsection (b), such share of the money, securi-
18 ties, and property described in clause (i) as in
19 the normal course of business shall be necessary
20 to margin, guarantee, secure, transfer, adjust,
21 or settle a cleared security-based swap with a
22 clearing agency, or with any member of the
23 clearing agency, may be withdrawn and applied
24 to such purposes, including the payment of
25 commissions, brokerage, interest, taxes, storage,

1 and other charges, lawfully accruing in connec-
2 tion with the cleared security-based swap.

3 “(2) COMMISSION ACTION.—Notwithstanding
4 subsection (b), in accordance with such terms and
5 conditions as the Commission may prescribe by rule,
6 regulation, or order, any money, securities, or prop-
7 erty of the security-based swaps customer of a
8 broker, dealer, or security-based swap dealer de-
9 scribed in subsection (b) may be commingled and de-
10 posited as provided in this section with any other
11 money, securities, or property received by the
12 broker, dealer, or security-based swap dealer and re-
13 quired by the Commission to be separately ac-
14 counted for and treated and dealt with as belonging
15 to the security-based swaps customer of the broker,
16 dealer, or security-based swap dealer.

17 “(d) PERMITTED INVESTMENTS.—Money described
18 in subsection (b) may be invested in obligations of the
19 United States, in general obligations of any State or of
20 any political subdivision of a State, and in obligations fully
21 guaranteed as to principal and interest by the United
22 States, or in any other investment that the Commission
23 may by rule or regulation prescribe, and such investments
24 shall be made in accordance with such rules and regula-

1 tions and subject to such conditions as the Commission
2 may prescribe.

3 “(e) PROHIBITION.—It shall be unlawful for any per-
4 son, including any clearing agency and any depository,
5 that has received any money, securities, or property for
6 deposit in a separate account or accounts as provided in
7 subsection (b) to hold, dispose of, or use any such money,
8 securities, or property as belonging to the depositing
9 broker, dealer, or security-based swap dealer or any person
10 other than the swaps customer of the broker, dealer, or
11 security-based swap dealer.”.

12 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6
13 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
14 is amended by adding at the end the following:

15 “(l) SECURITY-BASED SWAPS.—It shall be unlawful
16 for any person to effect a transaction in a security-based
17 swap with or for a person that is not an eligible contract
18 participant, unless such transaction is effected on a na-
19 tional securities exchange registered pursuant to sub-
20 section (b).”.

21 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
22 TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
24 amended by striking paragraphs (1) through (3) and in-
25 serting the following:

1 “(1) any transaction in connection with any se-
2 curity whereby any party to such transaction ac-
3 quires—

4 “(A) any put, call, straddle, or other op-
5 tion or privilege of buying the security from or
6 selling the security to another without being
7 bound to do so;

8 “(B) any security futures product on the
9 security; or

10 “(C) any security-based swap involving the
11 security or the issuer of the security; or

12 “(2) any transaction in connection with any se-
13 curity with relation to which he has, directly or indi-
14 rectly, any interest in any—

15 “(A) such put, call, straddle, option, or
16 privilege;

17 “(B) such security futures product; or

18 “(C) such security-based swap; or

19 “(3) any transaction in any security for the ac-
20 count of any person who he has reason to believe
21 has, and who actually has, directly or indirectly, any
22 interest in any—

23 “(A) such put, call, straddle, option, or
24 privilege;

1 “(B) such security futures product with re-
2 lation to such security; or

3 “(C) any security-based swap involving
4 such security or the issuer of such security.”.

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

10 “(i) It shall be unlawful for any person, directly or
11 indirectly, by the use of any means or instrumentality of
12 interstate commerce or of the mails, or of any facility of
13 any national securities exchange, to effect any transaction
14 in, or to induce or attempt to induce the purchase or sale
15 of, any security-based swap, in connection with which such
16 person engages in any fraudulent, deceptive, or manipula-
17 tive act or practice, makes any fictitious quotation, or en-
18 gages in any transaction, practice, or course of business
19 which operates as a fraud or deceit upon any person. The
20 Commission shall, for the purposes of this paragraph, by
21 rules and regulations define, and prescribe means reason-
22 ably designed to prevent, such transactions, acts, prac-
23 tices, and courses of business as are fraudulent, deceptive,
24 or manipulative, and such quotations as are fictitious.”.

1 (i) POSITION LIMITS AND POSITION ACCOUNT-
2 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
3 Exchange Act of 1934 is amended by inserting after sec-
4 tion 10A (15 U.S.C. 78j–1) the following new section:

5 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
6 **ABILITY FOR SECURITY-BASED SWAPS AND**
7 **LARGE TRADER REPORTING.**

8 “(a) POSITION LIMITS.—As a means reasonably de-
9 signed to prevent fraud and manipulation, the Commission
10 shall, by rule or regulation, as necessary or appropriate
11 in the public interest or for the protection of investors,
12 establish limits (including related hedge exemption provi-
13 sions) on the size of positions in any security-based swap
14 that may be held by any person. In establishing such lim-
15 its, the Commission may require any person to aggregate
16 positions in—

17 “(1) any security-based swap and any security
18 or loan or group or narrow-based security index of
19 securities or loans on which such security-based
20 swap is based, which such security-based swap ref-
21 erences, or to which such security-based swap is re-
22 lated as described in section 3(a)(68), and any other
23 instrument relating to such security or loan or group
24 or narrow-based security index of securities or loans;
25 or

1 “(2) any security-based swap and (A) any secu-
2 rity or group or narrow-based security index of secu-
3 rities, the price, yield, value, or volatility of which,
4 or of which any interest therein, is the basis for a
5 material term of such security-based swap as de-
6 scribed in section 3(a)(76) and (B) any security-
7 based swap and any other instrument relating to the
8 same security or group or narrow-based security
9 index of securities.

10 “(b) EXEMPTIONS.—The Commission, by rule, regu-
11 lation, or order, may conditionally or unconditionally ex-
12 empt any person or class of persons, any security-based
13 swap or class of security-based swaps, or any transaction
14 or class of transactions from any requirement it may es-
15 tablish under this section with respect to position limits.

16 “(c) SRO RULES.—

17 “(1) IN GENERAL.—As a means reasonably de-
18 signed to prevent fraud or manipulation, the Com-
19 mission, by rule, regulation, or order, as necessary
20 or appropriate in the public interest, for the protec-
21 tion of investors, or otherwise in furtherance of the
22 purposes of this title, may direct a self-regulatory
23 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—

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;

5 “(ii) a major security-based swap par-
6 ticipant; or

7 “(iii) a financial entity as described in
8 section 3B(a)(3)(A)(ii), and such
9 counterparty is eligible for and utilizing
10 the commercial end user clearing exemp-
11 tion under **[section 2(h)(3)]**.

12 “(2) COMPARABILITY OF CAPITAL AND MARGIN
13 REQUIREMENTS.—

14 “(A) IN GENERAL.—The prudential regu-
15 lators, the Commission, and the Securities and
16 Exchange Commission shall periodically (but
17 not less frequently than annually) consult on
18 minimum capital requirements and minimum
19 initial and variation margin requirements.

20 “(B) COMPARABILITY.—The entities de-
21 scribed in subparagraph (A) shall, to the max-
22 imum extent practicable, establish and maintain
23 comparable minimum capital requirements and
24 minimum initial and variation margin require-
25 ments for—

1 “(i) security-based swap dealers; and

2 “(ii) major security-based swap par-
3 ticipants.

4 “(3) RULEMAKING.—

5 “(A) BANK SECURITY-BASED SWAP DEAL-
6 ERS AND MAJOR SECURITY-BASED SWAP PAR-
7 TICIPANTS.—The Commission shall adopt rules
8 imposing capital and margin requirements
9 under this subsection for security-based swap
10 dealers and major security-based swap partici-
11 pants for which there is a prudential regulator.

12 “(B) NONBANK SECURITY-BASED SWAP
13 DEALERS AND MAJOR SECURITY-BASED SWAP
14 PARTICIPANTS.—The Commission shall adopt
15 rules imposing capital and margin requirements
16 under this subsection for security-based swap
17 dealers and major security-based swap partici-
18 pants for which there is no prudential regu-
19 lator.

20 “(f) REPORTING AND RECORDKEEPING.—

21 “(1) IN GENERAL.—Each registered security-
22 based swap dealer and major security-based swap
23 participant—

24 “(A) shall make such reports as are re-
25 quired by the Commission by rule or regulation

1 regarding the transactions and positions and fi-
2 nancial condition of the registered security-
3 based swap dealer or major security-based swap
4 participant;

5 “(B)(i) for which there is a prudential reg-
6 ulator, shall keep books and records of all ac-
7 tivities related to the business as a security-
8 based swap dealer or major security-based swap
9 participant in such form and manner and for
10 such period as may be prescribed by the Com-
11 mission by rule or regulation; and

12 “(ii) for which there is no prudential regu-
13 lator, shall keep books and records in such form
14 and manner and for such period as may be pre-
15 scribed by the Commission by rule or regula-
16 tion; and

17 “(C) shall keep books and records de-
18 scribed in subparagraph (B) open to inspection
19 and examination by any representative of the
20 Commission.

21 “(2) RULES.—The Commission shall adopt
22 rules governing reporting and recordkeeping for se-
23 curity-based swap dealers and major security-based
24 swap participants.

25 “(g) DAILY TRADING RECORDS.—

1 “(1) IN GENERAL.—Each registered security-
2 based swap dealer and major security-based swap
3 participant shall maintain daily trading records of
4 the security-based swaps of the registered security-
5 based swap dealer and major security-based swap
6 participant and all related records (including related
7 cash or forward transactions) and recorded commu-
8 nications, including electronic mail, instant mes-
9 sages, and recordings of telephone calls, for such pe-
10 riod as may be required by the Commission by rule
11 or regulation.

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

15 “(3) CUSTOMER RECORDS.—Each registered se-
16 curity-based swap dealer and major security-based
17 swap participant shall maintain daily trading records
18 for each customer or counterparty in a manner and
19 form that is identifiable with each security-based
20 swap transaction.

21 “(4) AUDIT TRAIL.—Each registered security-
22 based swap dealer and major security-based swap
23 participant shall maintain a complete audit trail for
24 conducting comprehensive and accurate trade recon-
25 structions.

1 “(5) RULES.—The Commission shall adopt
2 rules governing daily trading records for security-
3 based swap dealers and major security-based swap
4 participants.

5 “(h) BUSINESS CONDUCT STANDARDS.—

6 “(1) IN GENERAL.—Each registered security-
7 based swap dealer and major security-based swap
8 participant shall conform with such business conduct
9 standards as may be prescribed by the Commission
10 by rule or regulation that relate to—

11 “(A) fraud, manipulation, and other abu-
12 sive practices involving security-based swaps
13 (including security-based swaps that are offered
14 but not entered into);

15 “(B) diligent supervision of the business of
16 the registered security-based swap dealer and
17 major security-based swap participant;

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

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

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

24 “(A) GOVERNMENTAL ENTITIES.—A secu-
25 rity-based swap dealer that provides advice re-

1 garding, or offers to enter into, or enters into
2 a security-based swap with a State, State agen-
3 cy, city, county, municipality, or other political
4 subdivision or a Federal agency shall have a fi-
5 duciary duty to the State, State agency, city,
6 county, municipality, or other political subdivi-
7 sion, or the Federal agency as appropriate.

8 “(B) PENSION PLANS; ENDOWMENTS; RE-
9 TIREMENT PLANS.—A security-based swap deal-
10 er that provides advice regarding, or offers to
11 enter into, or enters into a security-based swap
12 with a pension plan, endowment, or retirement
13 plan shall have a fiduciary duty to the pension
14 plan, endowment, or retirement plan, as appro-
15 priate.

16 “(3) BUSINESS CONDUCT REQUIREMENTS.—
17 Business conduct requirements adopted by the Com-
18 mission shall—

19 “(A) establish the standard of care for a
20 security-based swap dealer or major security-
21 based swap participant to verify that any
22 counterparty meets the eligibility standards for
23 an eligible contract participant;

24 “(B) require disclosure by the security-
25 based swap dealer or major security-based swap

1 participant to any counterparty to the trans-
2 action (other than a security-based swap dealer
3 or a major security-based swap participant)
4 of—

5 “(i) information about the material
6 risks and characteristics of the security-
7 based swap;

8 “(ii) the source and amount of any
9 fees or other material remuneration that
10 the security-based swap dealer or major se-
11 curity-based swap participant would di-
12 rectly or indirectly expect to receive in con-
13 nection with the security-based swap;

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

19 “(iv)(I) for cleared security-based
20 swaps, upon the request of the
21 counterparty, the daily mark from the ap-
22 propriate derivatives clearing organization;
23 and

24 “(II) for uncleared security-based
25 swaps, upon request of the counterparty,

1 the daily mark of the security-based swap
2 dealer or the major security-based swap
3 participant; and

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

9 “(4) RULES.—The Commission shall prescribe
10 rules under this subsection governing business con-
11 duct standards for security-based swap dealers and
12 major security-based swap participants.

13 “(i) DOCUMENTATION AND BACK OFFICE STAND-
14 ARDS.—

15 “(1) IN GENERAL.—Each registered security-
16 based swap dealer and major security-based swap
17 participant shall conform with such standards as
18 may be prescribed by the Commission by rule or reg-
19 ulation that relate to timely and accurate confirma-
20 tion, processing, netting, documentation, and valu-
21 ation of all security-based swaps.

22 “(2) RULES.—The Commission shall adopt
23 rules governing documentation and back office
24 standards for security-based swap dealers and major
25 security-based swap participants.

1 “(j) DUTIES.—Each registered security-based swap
2 dealer and major security-based swap participant at all
3 times shall comply with the following requirements:

4 “(1) MONITORING OF TRADING.—The security-
5 based swap dealer or major security-based swap par-
6 ticipant shall monitor its trading in security-based
7 swaps to prevent violations of applicable position
8 limits.

9 “(2) RISK MANAGEMENT PROCEDURES.—The
10 security-based swap dealer or major security-based
11 swap participant shall establish robust and profes-
12 sional risk management systems adequate for man-
13 aging the day-to-day business of the security-based
14 swap dealer or major security-based swap partici-
15 pant.

16 “(3) DISCLOSURE OF GENERAL INFORMA-
17 TION.—The security-based swap dealer or major se-
18 curity-based swap participant shall disclose to the
19 Commission and to the prudential regulator for the
20 security-based swap dealer or major security-based
21 swap participant, as applicable, information con-
22 cerning—

23 “(A) terms and conditions of its security-
24 based swaps;

1 “(B) security-based swap trading oper-
2 ations, mechanisms, and practices;

3 “(C) financial integrity protections relating
4 to security-based swaps; and

5 “(D) other information relevant to its trad-
6 ing in security-based swaps.

7 “(4) ABILITY TO OBTAIN INFORMATION.—The
8 security-based swap dealer or major security-based
9 swap participant shall—

10 “(A) establish and enforce internal systems
11 and procedures to obtain any necessary infor-
12 mation to perform any of the functions de-
13 scribed in this section; and

14 “(B) provide the information to the Com-
15 mission and to the prudential regulator for the
16 security-based swap dealer or major security-
17 based swap participant, as applicable, on re-
18 quest.

19 “(5) CONFLICTS OF INTEREST.—The security-
20 based swap dealer and major security-based swap
21 participant shall implement conflict-of-interest sys-
22 tems and procedures that—

23 “(A) establish structural and institutional
24 safeguards to ensure that the activities of any
25 person within the firm relating to research or

1 analysis of the price or market for any com-
2 modity or security-based swap or acting in a
3 role of providing clearing activities or making
4 determinations as to accepting clearing cus-
5 tomers are separated by appropriate informa-
6 tional partitions within the firm from the re-
7 view, pressure, or oversight of persons whose in-
8 volvement in pricing, trading, or clearing activi-
9 ties might potentially bias their judgment or su-
10 pervision and contravene the core principles of
11 open access and the business conduct standards
12 described in this title; and

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

15 “(6) ANTITRUST CONSIDERATIONS.—Unless
16 specifically reviewed and approved by the Commis-
17 sion for antitrust purposes, the security-based swap
18 dealer or major security-based swap participant shall
19 not—

20 “(A) adopt any process or take any action
21 that results in any unreasonable restraint of
22 trade; or

23 “(B) impose any material anticompetitive
24 burden on trading or clearing.

1 “(k) DESIGNATION OF CHIEF COMPLIANCE OFFI-
2 CER.—

3 “(1) IN GENERAL.—Each security-based swap
4 dealer and major security-based swap participant
5 shall designate an individual to serve as a chief com-
6 pliance officer.

7 “(2) DUTIES.—The chief compliance officer
8 shall—

9 “(A) report directly to the board or to the
10 senior officer of the security-based swap dealer
11 or major security-based swap participant;

12 “(B) review the compliance of the security-
13 based swap dealer or major security-based swap
14 participant with respect to the security-based
15 swap dealer and major security-based swap par-
16 ticipant requirements described in this section;

17 “(C) in consultation with the board of di-
18 rectors, a body performing a function similar to
19 the board, or the senior officer of the organiza-
20 tion, resolve any conflicts of interest that may
21 arise;

22 “(D) be responsible for administering each
23 policy and procedure that is required to be es-
24 tablished pursuant to this section;

1 “(E) ensure compliance with this title (in-
2 cluding regulations) relating to security-based
3 swaps, including each rule prescribed by the
4 Commission under this section;

5 “(F) establish procedures for the remedi-
6 ation of noncompliance issues identified by the
7 chief compliance officer through any—

8 “(i) compliance office review;

9 “(ii) look-back;

10 “(iii) internal or external audit find-
11 ing;

12 “(iv) self-reported error; or

13 “(v) validated complaint; and

14 “(G) establish and follow appropriate pro-
15 cedures for the handling, management response,
16 remediation, retesting, and closing of non-
17 compliance issues.

18 “(3) ANNUAL REPORTS.—

19 “(A) IN GENERAL.—In accordance with
20 rules prescribed by the Commission, the chief
21 compliance officer shall annually prepare and
22 sign a report that contains a description of—

23 “(i) the compliance of the security-
24 based swap dealer or major swap partici-

1 pant with respect to this title (including
2 regulations); and

3 “(ii) each policy and procedure of the
4 security-based swap dealer or major secu-
5 rity-based swap participant 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 security-based swap
12 dealer or major security-based swap partic-
13 ipant that is required to be furnished to
14 the Commission pursuant to this section;
15 and

16 “(ii) include a certification that, under
17 penalty of law, the compliance report is ac-
18 curate and complete.

19 “(l) STATUTORY DISQUALIFICATION.—Except to the
20 extent otherwise specifically provided by rule, regulation,
21 or order of the Commission, it shall be unlawful for a secu-
22 rity-based swap dealer or a major security-based swap par-
23 ticipant to permit any person associated with a security-
24 based swap dealer or a major security-based swap partici-
25 pant who is subject to a statutory disqualification to effect

1 or be involved in effecting security-based swaps on behalf
2 of such security-based swap dealer or major security-based
3 swap participant, if such security-based swap dealer or
4 major security-based swap participant knew, or in the ex-
5 ercise of reasonable care should have known, of such stat-
6 utory disqualification.

7 “(m) ENFORCEMENT AND ADMINISTRATIVE PRO-
8 CEEDING AUTHORITY.—

9 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

10 “(A) SEC.—Except as provided in sub-
11 paragraph (B), the Commission shall have ex-
12 clusive authority to enforce the amendments
13 made by title II of the Wall Street Trans-
14 parency and Accountability Act of 2010, with
15 respect to any person.

16 “(B) PRUDENTIAL REGULATORS.—The
17 prudential regulator shall have exclusive author-
18 ity to enforce the provisions of section 15F(d)
19 and other prudential requirements of this title,
20 with respect to banks, and branches or agencies
21 of foreign banks that are security-based swap
22 dealers or major security-based swap partici-
23 pants.

24 “(C) REFERRAL.—

1 “(i) VIOLATIONS OF NONPRUDENTIAL
2 REQUIREMENTS.—If the prudential regu-
3 lator for a security-based swap dealer or
4 major security-based swap participant has
5 cause to believe that such security-based
6 swap dealer or major security-based swap
7 participant may have engaged in conduct
8 that constitutes a violation of the non-
9 prudential requirements of section 15F or
10 rules adopted by the Commission there-
11 under, that prudential regulator may rec-
12 ommend in writing to the Commission that
13 the Commission initiate an enforcement
14 proceeding as authorized under this title.
15 The recommendation shall be accompanied
16 by a written explanation of the concerns
17 giving rise to the recommendation.

18 “(ii) VIOLATIONS OF PRUDENTIAL RE-
19 QUIREMENTS.—If the Commission has
20 cause to believe that a securities-based
21 swap dealer or major securities-based swap
22 participant that has a prudential regulator
23 may have engaged in conduct that con-
24 stitute a violation of the prudential re-
25 quirements of section 15F(e) or rules

1 adopted thereunder, the Commission may
2 recommend in writing to the prudential
3 regulator that the prudential regulator ini-
4 tiate an enforcement proceeding as author-
5 ized under this title. The recommendation
6 shall be accompanied by a written expla-
7 nation of the concerns giving rise to the
8 recommendation.

9 “(2) CENSURE, DENIAL, SUSPENSION; NOTICE
10 AND HEARING.—The Commission, by order, shall
11 censure, place limitations on the activities, functions,
12 or operations of, or revoke the registration of any se-
13 curity-based swap dealer or major security-based
14 swap participant that has registered with the Com-
15 mission pursuant to subsection (b) if it finds, on the
16 record after notice and opportunity for hearing, that
17 such censure, placing of limitations, or revocation is
18 in the public interest and that such security-based
19 swap dealer or major security-based swap partici-
20 pant, or any person associated with such security-
21 based swap dealer or major security-based swap par-
22 ticipant effecting or involved in effecting trans-
23 actions in security-based swaps on behalf of such se-
24 curity-based swap dealer or major security-based

1 swap participant, whether prior or subsequent to be-
2 coming so associated—

3 “(A) has committed or omitted any act, or
4 is subject to an order or finding, enumerated in
5 subparagraph (A), (D), or (E) of paragraph (4)
6 of section 15(b);

7 “(B) has been convicted of any offense
8 specified in subparagraph (B) of such para-
9 graph (4) within 10 years of the commencement
10 of the proceedings under this subsection;

11 “(C) is enjoined from any action, conduct,
12 or practice specified in subparagraph (C) of
13 such paragraph (4);

14 “(D) is subject to an order or a final order
15 specified in subparagraph (F) or (H), respec-
16 tively, of such paragraph (4); or

17 “(E) has been found by a foreign financial
18 regulatory authority to have committed or omit-
19 ted any act, or violated any foreign statute or
20 regulation, enumerated in subparagraph (G) of
21 such paragraph (4).

22 “(3) ASSOCIATED PERSONS.—With respect to
23 any person who is associated, who is seeking to be-
24 come associated, or, at the time of the alleged mis-
25 conduct, who was associated or was seeking to be-

1 come associated with a security-based swap dealer or
2 major security-based swap participant for the pur-
3 pose of effecting or being involved in effecting secu-
4 rity-based swaps on behalf of such security-based
5 swap dealer or major security-based swap partici-
6 pant, the Commission, by order, shall censure, place
7 limitations on the activities or functions of such per-
8 son, or suspend for a period not exceeding 12
9 months, or bar such person from being associated
10 with a security-based swap dealer or major security-
11 based swap participant, if the Commission finds, on
12 the record after notice and opportunity for a hear-
13 ing, that such censure, placing of limitations, sus-
14 pension, or bar is in the public interest and that
15 such person—

16 “(A) has committed or omitted any act, or
17 is subject to an order or finding, enumerated in
18 subparagraph (A), (D), or (E) of paragraph (4)
19 of section 15(b);

20 “(B) has been convicted of any offense
21 specified in subparagraph (B) of such para-
22 graph (4) within 10 years of the commencement
23 of the proceedings under this subsection;

1 “(C) is enjoined from any action, conduct,
2 or practice specified in subparagraph (C) of
3 such paragraph (4);

4 “(D) is subject to an order or a final order
5 specified in subparagraph (F) or (H), respec-
6 tively, of such paragraph (4); or

7 “(E) has been found by a foreign financial
8 regulatory authority to have committed or omit-
9 ted any act, or violated any foreign statute or
10 regulation, enumerated in subparagraph (G) of
11 such paragraph (4).

12 “(4) UNLAWFUL CONDUCT.—It shall be unlaw-
13 ful—

14 “(A) for any person as to whom an order
15 under paragraph (3) is in effect, without the
16 consent of the Commission, willfully to become,
17 or to be, associated with a security-based swap
18 dealer or major security-based swap participant
19 in contravention of such order; or

20 “(B) for any security-based swap dealer or
21 major security-based swap participant to permit
22 such a person, without the consent of the Com-
23 mission, to become or remain a person associ-
24 ated with the security-based swap dealer or
25 major security-based swap participant in con-

1 travention of such order, if such security-based
2 swap dealer or major security-based swap par-
3 ticipant knew, or in the exercise of reasonable
4 care should have known, of such order.”.

5 **SEC. 205. RULEMAKING ON CONFLICT OF INTEREST.**

6 (a) IN GENERAL.—The Securities and Exchange
7 Commission shall determine whether to adopt rules to es-
8 tablish limits on the control of any clearing agency that
9 clears security-based swaps, or swap execution facility or
10 national securities exchange that posts or makes available
11 for trading security-based swaps, by a bank holding com-
12 pany (as defined in section 2 of the Bank Holding Com-
13 pany Act of 1956 (12 U.S.C. 1841)) with total consoli-
14 dated assets of \$50,000,000,000 or more, a nonbank fi-
15 nancial company (as defined in Section 102 of the Finan-
16 cial Stability Act of 2010) supervised by the Board of Gov-
17 ernors of the Federal Reserve System, affiliate of such a
18 bank holding company or nonbank financial company, a
19 security-based swap dealer, major security-based swap
20 participant, or person associated with a security-based
21 swap dealer or major security-based swap participant.

22 (b) PURPOSES.—The Commission shall adopt rules if
23 it determines, after the review described in subsection (a),
24 that such rules are necessary or appropriate to improve
25 the governance of, or to mitigate systemic risk, promote

1 competition, or mitigate conflicts of interest in connection
2 with a security-based swap dealer or major security-based
3 swap participant's conduct of business with, a clearing
4 agency, exchange, or swap execution facility that clears,
5 posts, or makes available for trading security-based swaps
6 and in which such security-based swap dealer or major se-
7 curity-based swap participant has a material debt or eq-
8 uity investment.

9 **SEC. 206. REPORTING AND RECORDKEEPING.**

10 (a) IN GENERAL.—The Securities Exchange Act of
11 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
12 section 13 the following section:

13 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
14 **TAIN SECURITY-BASED SWAPS.**

15 “(a) REQUIRED REPORTING OF SECURITY-BASED
16 SWAPS NOT ACCEPTED BY ANY CLEARING AGENCY OR
17 DERIVATIVES CLEARING ORGANIZATION.—

18 “(1) IN GENERAL.—Each security-based swap
19 that is not accepted for clearing by any clearing
20 agency or derivatives clearing organization shall be
21 reported to—

22 “(A) a swap data repository described in
23 section 10B(n); or

24 “(B) in the case in which there is no swap
25 data repository that would accept the security-

1 based swap, to the Commission pursuant to this
2 section within such time period as the Commis-
3 sion may by rule or regulation prescribe.

4 “(2) TRANSITION RULE FOR PREENACTMENT
5 SECURITY-BASED SWAPS.—

6 “(A) SECURITY-BASED SWAPS ENTERED
7 INTO BEFORE THE DATE OF ENACTMENT OF
8 THE WALL STREET TRANSPARENCY AND AC-
9 COUNTABILITY ACT OF 2010.—Each security-
10 based swap entered into before the date of en-
11 actment of the Wall Street Transparency and
12 Accountability Act of 2010, the terms of which
13 have not expired as of the date of enactment of
14 that Act, shall be reported to a registered secu-
15 rity-based swap data repository or the Commis-
16 sion by a date that is not later than—

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

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

21 “(B) COMMISSION RULEMAKING.—The
22 Commission shall promulgate an interim final
23 rule within 90 days of the date of enactment of
24 this section providing for the reporting of each
25 security-based swap entered into before the date

1 of enactment as referenced in subparagraph
2 (A).

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

6 “(3) REPORTING OBLIGATIONS.—

7 “(A) SECURITY-BASED SWAPS IN WHICH
8 ONLY 1 COUNTERPARTY IS A SECURITY-BASED
9 SWAP DEALER OR MAJOR SECURITY-BASED
10 SWAP PARTICIPANT.—With respect to a secu-
11 rity-based swap in which only 1 counterparty is
12 a security-based swap dealer or major security-
13 based swap participant, the security-based swap
14 dealer or major security-based swap participant
15 shall report the security-based swap as required
16 under paragraphs (1) and (2).

17 “(B) SECURITY-BASED SWAPS IN WHICH 1
18 COUNTERPARTY IS A SECURITY-BASED SWAP
19 DEALER AND THE OTHER A MAJOR SECURITY-
20 BASED SWAP PARTICIPANT.—With respect to a
21 security-based swap in which 1 counterparty is
22 a security-based swap dealer and the other a
23 major security-based swap participant, the secu-
24 rity-based swap dealer shall report the security-

1 based swap as required under paragraphs (1)
2 and (2).

3 “(C) OTHER SECURITY-BASED SWAPS.—

4 With respect to any other security-based swap
5 not described in subparagraph (A) or (B), the
6 counterparties to the security-based swap shall
7 select a counterparty to report the security-
8 based swap as required under paragraphs (1)
9 and (2).

10 “(b) DUTIES OF CERTAIN INDIVIDUALS.—Any indi-
11 vidual or entity that enters into a security-based swap
12 shall meet each requirement described in subsection (c)
13 if the individual or entity did not—

14 “(1) clear the security-based swap in accord-
15 ance with section 3B(a)(1); or

16 “(2) have the data regarding the security-based
17 swap accepted by a security-based swap data reposi-
18 tory in accordance with rules (including timeframes)
19 adopted by the Commission under this title.

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

22 “(1) upon written request from the Commis-
23 sion, provide reports regarding the security-based
24 swaps held by the individual or entity to the Com-

1 mission in such form and in such manner as the
2 Commission may request; and

3 “(2) maintain books and records pertaining to
4 the security-based swaps held by the individual or
5 entity in such form, in such manner, and for such
6 period as the Commission may require, which shall
7 be open to inspection by—

8 “(A) any representative of the Commis-
9 sion;

10 “(B) an appropriate prudential regulator;

11 “(C) the Commodity Futures Trading
12 Commission;

13 “(D) the Financial Services Oversight
14 Council; and

15 “(E) the Department of Justice.

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

22 (b) BENEFICIAL OWNERSHIP REPORTING.—Section
23 13 of the Securities Exchange Act of 1934 (15 U.S.C.
24 78m) is amended—

1 (1) in subsection (d)(1), by inserting “or other-
2 wise becomes or is deemed to become a beneficial
3 owner of any of the foregoing upon the purchase or
4 sale of a security-based swap that the Commission
5 may define by rule, and” after “Alaska Native
6 Claims Settlement Act,”; and

7 (2) in subsection (g)(1), by inserting “or other-
8 wise becomes or is deemed to become a beneficial
9 owner of any security of a class described in sub-
10 section (d)(1) upon the purchase or sale of a secu-
11 rity-based swap that the Commission may define by
12 rule” after “subsection (d)(1) of this section”.

13 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
14 AGERS.—Section 13(f)(1) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
16 “or otherwise becomes or is deemed to become a beneficial
17 owner of any security of a class described in subsection
18 (d)(1) upon the purchase or sale of a security-based swap
19 that the Commission may define by rule,” after “sub-
20 section (d)(1) of this section”.

21 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
22 Section 15(b)(4) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78o(b)(4)) is amended—

1 (1) in subparagraph (C), by adding “security-
2 based swap dealer, major security-based swap partici-
3 pant,” after “government securities dealer,”; and

4 (2) in subparagraph (F), by adding “, or secu-
5 rity-based swap dealer, or a major security-based
6 swap participant” after “or dealer”.

7 (e) SECURITY-BASED SWAP BENEFICIAL OWNER-
8 SHIP.—Section 13 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78m) is amended by adding at the end the
10 following:

11 “(o) BENEFICIAL OWNERSHIP.—For purposes of this
12 section and section 16, a person shall be deemed to acquire
13 beneficial ownership of an equity security based on the
14 purchase or sale of a security-based swap, only to the ex-
15 tent that the Commission, by rule, determines after con-
16 sultation with the prudential regulators and the Secretary
17 of the Treasury, that the purchase or sale of the security-
18 based swap, or class of security-based swap, provides inci-
19 dents of ownership comparable to direct ownership of the
20 equity security, and that it is necessary to achieve the pur-
21 poses of this section that the purchase or sale of the secu-
22 rity-based swaps, or class of security-based swap, be
23 deemed the acquisition of beneficial ownership of the eq-
24 uity security.”.

1 **SEC. 207. STATE GAMING AND BUCKET SHOP LAWS.**

2 Section 28(a) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78bb(a)) is amended to read as follows:

4 “(a) **LIMITATION ON JUDGMENTS.**—

5 “(1) **IN GENERAL.**—No person permitted to
6 maintain a suit for damages under the provisions of
7 this title shall recover, through satisfaction of judg-
8 ment in one or more actions, a total amount in ex-
9 cess of the actual damages to that person on account
10 of the act complained of. Except as otherwise spe-
11 cifically provided in this title, nothing in this title
12 shall affect the jurisdiction of the securities commis-
13 sion (or any agency or officer performing like func-
14 tions) of any State over any security or any person
15 insofar as it does not conflict with the provisions of
16 this title or the rules and regulations under this
17 title.

18 “(2) **RULE OF CONSTRUCTION.**—Except as pro-
19 vided in subsection (f), the rights and remedies pro-
20 vided by this title shall be in addition to any and all
21 other rights and remedies that may exist at law or
22 in equity.

23 “(3) **STATE BUCKET SHOP LAWS.**—No State
24 law which prohibits or regulates the making or pro-
25 moting of wagering or gaming contracts, or the op-

1 eration of ‘bucket shops’ or other similar or related
2 activities, shall invalidate—

3 “(A) any put, call, straddle, option, privi-
4 lege, or other security subject to this title (ex-
5 cept any security that has a pari-mutuel payout
6 or otherwise is determined by the Commission,
7 acting by rule, regulation, or order, to be appro-
8 priately subject to such laws), or apply to any
9 activity which is incidental or related to the
10 offer, purchase, sale, exercise, settlement, or
11 closeout of any such security;

12 “(B) any security-based swap between eli-
13 gible contract participants; or

14 “(C) any security-based swap effected on a
15 national securities exchange registered pursuant
16 to section 6(b).

17 “(4) OTHER STATE PROVISIONS.—No provision
18 of State law regarding the offer, sale, or distribution
19 of securities shall apply to any transaction in a secu-
20 rity-based swap or a security futures product, except
21 that this paragraph may not be construed as lim-
22 iting any State antifraud law of general applica-
23 bility. A security-based swap may not be regulated
24 as an insurance contract under any provision of
25 State law.”.

1 **SEC. 208. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
2 **TREATMENT OF SECURITY-BASED SWAPS.**

3 (a) DEFINITIONS.—Section 2(a) of the Securities Act
4 of 1933 (15 U.S.C. 77b(a)) is amended—

5 (1) in paragraph (1), by inserting “security-
6 based swap,” after “security future,”;

7 (2) in paragraph (3) by adding at the end the
8 following: “Any offer or sale of a security-based
9 swap by or on behalf of the issuer of the securities
10 upon which such security-based swap is based or is
11 referenced, an affiliate of the issuer, or an under-
12 writer, shall constitute a contract for sale of, sale of,
13 offer for sale, or offer to sell such securities.”; and

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

15 “(17) The terms ‘swap’ and ‘security-based
16 swap’ have the same meanings as in section 1a of
17 the Commodity Exchange.

18 “(18) The terms ‘purchase’ or ‘sale’ of a secu-
19 rity-based swap shall be deemed to mean the execu-
20 tion, termination (prior to its scheduled maturity
21 date), assignment, exchange, or similar transfer or
22 conveyance of, or extinguishing of rights or obliga-
23 tions under, a security-based swap, as the context
24 may require.”.

1 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
2 of the Securities Act of 1933 (15 U.S.C. 77c) is amended
3 by adding at the end the following:

4 “(15) Any security-based swap that is not oth-
5 erwise a security, and that satisfies such conditions
6 as are established by rule or regulation by the Com-
7 mission, consistent with the provisions of the Wall
8 Street Transparency and Accountability Act of
9 2010.”.

10 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
11 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
12 is amended by adding at the end the following:

13 “(d) Notwithstanding the provisions of section 3 or
14 4, unless a registration statement meeting the require-
15 ments of section 10(a) is in effect as to a security-based
16 swap, it shall be unlawful for any person, directly or indi-
17 rectly, to make use of any means or instruments of trans-
18 portation or communication in interstate commerce or of
19 the mails to offer to sell, offer to buy or purchase or sell
20 a security-based swap to any person who is not an eligible
21 contract participant as defined in section 1a(12) of the
22 Commodity Exchange Act (7 U.S.C. 1a(12)).”.

1 **SEC. 209. DEFINITIONS UNDER THE INVESTMENT COMPANY**

2 **ACT OF 1940.**

3 Section 2(a) of the Investment Company Act of 1940
4 (15 U.S.C. 80a-1) is amended—

5 “(54) SWAP RELATED TERMS.—The terms
6 ‘broad-based security index’, ‘commodity pool’, ‘com-
7 modity pool operator’, ‘commodity trading advisor’,
8 ‘major swap participant’, ‘swap’, ‘swap dealer’, and
9 ‘swap execution facility’ have the same meanings as
10 in section 1a of the Commodity Exchange Act (7
11 U.S.C. 1a).”.

12 **SEC. 210. DEFINITIONS UNDER THE INVESTMENT ADVI-**

13 **SORS ACT OF 1940.**

14 Section 202(a) of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b-1) is amended—

16 “(29) SWAP RELATED TERMS.—The terms
17 ‘broad-based security index’, ‘commodity pool’, ‘com-
18 modity pool operator’, ‘commodity trading advisor’,
19 ‘major swap participant’, ‘swap’, ‘swap dealer’, and
20 ‘swap execution facility’ have the same meanings as
21 in section 1a of the Commodity Exchange Act (7
22 U.S.C. 1a).”.

23 **SEC. 211. OTHER AUTHORITY.**

24 Unless otherwise provided by its terms, this title does
25 not divest any appropriate Federal banking agency, the
26 Securities and Exchange Commission, the Commodity Fu-

1 tures Trading Commission, or any other Federal or State
2 agency, of any authority derived from any other provision
3 of applicable law.

4 **SEC. 212. JURISDICTION.**

5 (a) IN GENERAL.—Section 36 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78mm) is amended by add-
7 ing at the end the following new subsection:

8 “(c) DERIVATIVES.—The Commission shall not grant
9 exemptions from the security-based swap provisions of the
10 Wall Street Transparency and Accountability Act of 2010
11 or the amendments made by that Act, except as expressly
12 authorized under the provisions of that Act.”.

13 (b) RULE OF CONSTRUCTION.—Section 30 of the Se-
14 curities Exchange Act of 1934 is amended by adding at
15 the end the following:

16 “(c) RULE OF CONSTRUCTION.—No provision of this
17 title that was added by the Wall Street Transparency and
18 Accountability Act of 2010, or any rule or regulation
19 thereunder, shall apply to any person insofar as such per-
20 son transacts a business in security-based swaps without
21 the jurisdiction of the United States, unless such person
22 transacts such business in contravention of such rules and
23 regulations as the Commission may prescribe as necessary
24 or appropriate to prevent the evasion of any provision of
25 this title that was added by the Wall Street Transparency

1 and Accountability Act of 2010. This subsection shall not
2 be construed to limit the jurisdiction of the Commission
3 under any provision of this title, as in effect prior to the
4 date of enactment of the Wall Street Transparency and
5 Accountability Act of 2010.”.

6 **SEC. 213. EFFECTIVE DATE.**

7 (a) IN GENERAL.—Unless otherwise specifically pro-
8 vided in this title, the provisions of this title shall become
9 effective on the later of 180 days after the date of enact-
10 ment of this Act or, to the extent that a provision of this
11 title requires rulemaking, not later than 60 days after
12 publication of a final rule or regulation implementing such
13 provision of this title.

14 (b) RULE OF CONSTRUCTION.—Subsection (a) does
15 not preclude the Securities and Exchange Commission
16 from any rulemaking required to implement the provisions
17 of this title.