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 “Wall Street Transparency and Accountability Act of 2010”.
5 (b) Table of Contents.—The table of contents for this Act is as follows:
6 Sec. 1. Short title; table of contents.

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

Subtitle A—Regulatory Authority
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. 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.
TITLE I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

Subtitle A—Regulatory Authority

SEC. 101. DEFINITIONS.

In this subtitle, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “broad-based security index”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, “swap data repository”, and “associated person of a security-based swap dealer or major security-based swap participant” have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

SEC. 102. REVIEW OF REGULATORY AUTHORITY.

(a) Consultation.—

(1) Commodity futures trading commission.—

(A) In general.—Except as provided in subparagraph (B), before commencing any rule-making or issuing an order regarding swaps,
swap dealers, major swap participants, swap data repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this title (including an amendment made by this title), the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the prudential regulators.

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

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

(ii) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

(C) PROCEDURES.—The Commodity Futures Trading Commission shall have sole discretion to determine the appropriate procedures for the consultation required under this paragraph.
(D) EFFECT.—Nothing in this paragraph authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(2) SECURITIES AND EXCHANGE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), before commencing any rule-making or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to title II (including an amendment made by title II), the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the prudential regulators.
(B) APPLICABILITY.—The requirements of subparagraph (A) shall not apply to an order issued—

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

(ii) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5, United States Code.

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

(D) EFFECT.—Nothing in this paragraph authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(3) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection—
(A) the Commodity Futures Trading Commission shall consider the views of—

(i) the Securities and Exchange Commission; and

(ii) the prudential regulators; and

(B) the Securities and Exchange Commission shall consider the views of—

(i) the Commodity Futures Trading Commission; and

(ii) the prudential regulators.

(4) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or
entities described in paragraphs (1) and (2) in an identical manner.

(b) LIMITATION.—

(1) COMMODITY FUTURES TRADING COMMISSION.—Nothing in this title, unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

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

(vi) swap execution facilities with respect to security-based swaps.
2  (2) Securities and Exchange Commission.—Nothing in this title, unless specifically pro-
3  vided, confers jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or
4  order providing for oversight or regulation of—
5
6      (A) swaps; or
7
8      (B) with regard to its activities or func-
9  tions concerning swaps—
10
11      (i) swap dealers;
12
13      (ii) major swap participants;
14
15      (iii) swap data repositories;
16
17      (iv) persons associated with a swap
18      dealer or major swap participant;
19
20      (v) eligible contract participants with
21      respect to swaps; or
22
23      (vi) swap execution facilities with re-
24      spect to swaps.
25
26  (3) Prohibition on Certain Futures Asso-
27  ciations and National Securities Associa-
28  tions.—
29
30      (A) Futures Associations.—Notwith-
31      standing any other provision of law (including
32      regulations), unless otherwise authorized by this
33      title, no futures association registered under
34      section 17 of the Commodity Exchange Act (7
U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap.

(B) NATIONAL SECURITIES ASSOCIATIONS.—Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title, no national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—

(A) IN GENERAL.—If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of
publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) **EXPEDITED PROCEEDING.**—A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) **TRANSMITTAL OF PETITION AND RECORD.**—

(A) **IN GENERAL.**—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) **DUTY OF RESPONDING COMMISSION.**—

On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.
(3) STANDARD OF REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall—

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

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.

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

(d) ADOPTION OF RULES ON UNCLEARED SWAPS.—Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall, after consulting with each other Commission, adopt rules—

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

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

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

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

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

SEC. 103. RECOMMENDATIONS FOR CHANGES TO PORTFOLIO MARGINING LAWS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators shall submit to the appropriate committees of Congress recommendations for legislative changes to the Federal laws to facilitate the portfolio margining of securities and commodity futures and options, commodity options, swaps, and other financial instrument positions.

SEC. 104. ABUSIVE SWAPS.

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

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or
(B) security-based swap (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); and

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

(A) the stability of a financial market; or

(B) participants in a financial market.

SEC. 105. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

Except as provided in section 4 of the Commodity Exchange Act (7 U.S.C. 6) (as amended by section 128), if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.
SEC. 106. PROHIBITION AGAINST FEDERAL GOVERNMENT BAILOUTS OF SWAPS ENTITIES.

(a) Prohibition on Federal Assistance.—Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) Definitions.—In this section:

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

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

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or
17

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

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

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

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

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

Subtitle B—Regulation of Swap
Markets

SEC. 111. DEFINITIONS.

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

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

(2) by inserting after paragraph (1) the following:

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

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

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

“(A) IN GENERAL.—The term ‘associated person of a swap dealer or major swap participant’ means—

“(i) any partner, officer, director, or branch manager of a swap dealer or major swap participant (including any individual who holds a similar status or performs a
similar function with respect to any partner, officer, director, or branch manager of a swap dealer or major swap participant;

“(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap dealer or major swap participant; and

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

“(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term ‘associated person of a swap dealer or major swap participant’ does not include any person associated with a swap dealer or major swap participant the functions of which are solely clerical or ministerial.

“(5) BOARD.—The term ‘Board’ means the Board of Governors of the Federal Reserve System.”;

(3) by inserting after paragraph (6) (as redesignated by paragraph (1)) the following:

“(7) BROAD-BASED SECURITY INDEX.—The term ‘broad-based security index’ means an index that—
“(A) is not a narrow-based security index, as defined in this section;

“(B) the Commission and the Securities and Exchange Commission have jointly determined should not be treated as a narrow-based security index; or

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

“(8) CLEARED SWAP.—The term ‘cleared swap’ means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.”;

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

(5) by inserting after paragraph (10) (as redesignated by paragraph (1)) the following:
“(11) Commodity pool.—

“(A) In general.—The term ‘commodity pool’ means any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in commodity interests, including any—

“(i) commodity for future delivery, security futures product, or swap;

“(ii) agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

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

“(iv) leverage transaction authorized under section 19.

“(B) Further definition.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘commodity pool’ any investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

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

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

“(i) engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interest, including any—

“(I) commodity for future delivery, security futures product, or swap;

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

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

“(IV) leverage transaction authorized under section 19; or

“(ii) who is registered with the Commission as a commodity pool operator.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include
within, or exclude from, the term ‘commodity pool operator’ any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

(7) in paragraph (13) (as redesignated by paragraph (1)), in subparagraph (A)—

(A) in clause (i)—

(i) in subclause (I), by striking “made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility” and inserting “, security futures product, or swap”;

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

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

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

and

(iv) in subclause (IV) (as so redesignated), by striking “or” ;
(B) in clause (ii), by striking the period at
the end and inserting a semicolon; and

(C) by adding at the end the following:

“(iii) is registered with the Commis-

sion as a commodity trading advisor; or

“(iv) the Commission, by rule or regu-

lation, may include if the Commission de-

termines that the rule or regulation will ef-

fectuate the purposes of this Act.”;

(8) in paragraph (18) (as redesignated by para-

graph (1)), in subparagraph (A), in the matter pre-

ceding clause (i), by striking “paragraph (12)(A)”

and inserting “paragraph (19)(A)”;

(9) in paragraph (19) (as redesignated by para-

graph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause

(vii)(III)—

(I) by striking “section 1a

(11)(A)” and inserting “paragraph

(18)(A)”; and

(II) by striking “$25,000,000”

and inserting “$50,000,000”; and

(ii) in clause (xi), in the matter pre-

ceding subclause (I), by striking “total as-
sets in an amount” and inserting
“amounts invested on a discretionary
basis, the aggregate of which is”;

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

“(23) FLOOR BROKER.—

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

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

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

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

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

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

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

“(24) FLOOR TRADER.—

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

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

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

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

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

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

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

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

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

“(B) is physically settled.

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

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

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

(13) by striking paragraph (29) (as redesig-
nated by paragraph (1)) and inserting the following:
“(29) FUTURES COMMISSION MERCHANT.—
“(A) IN GENERAL.—The term ‘futures
commission merchant’ means an individual, as-
association, partnership, corporation, or trust—
“(i) that—
“(I) is engaged in soliciting or in
accepting orders for—
“(aa) the purchase or sale of
a commodity for future delivery;
“(bb) a security futures
product;
“(cc) a swap;
“(dd) any agreement, con-
tract, or transaction described in
section 2(c)(2)(C)(i) or section
2(c)(2)(D)(i);
“(ee) any commodity option
authorized under section 4c; or
“(ff) any leverage transaction authorized under section 19; or

“(II) is acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and

“(III) in or in connection with the activities described in subclause (I) or (II), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or

“(ii) that is registered with the Commission as a futures commission merchant.

“(B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term ‘futures commission merchant’ any person who engages in soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends
credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.”;

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

(15) by striking paragraph (32) (as redesignated by paragraph (1)) and inserting the following:

“(32) INTRODUCING BROKER.—

“(A) IN GENERAL.—The term ‘introducing broker’ means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant)—

“(i) who—

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

“(aa) the purchase or sale of any commodity for future delivery, security futures product, or swap;

“(bb) any agreement, contract, or transaction described in
section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); "(cc) any commodity option authorized under section 4c; or "(dd) any leverage transaction authorized under section 19; and "(II) does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or "(ii) who is registered with the Commission as an introducing broker.

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

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

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

“(34) MAJOR SWAP PARTICIPANT.—

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

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

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

“(II) positions maintained by any
employee benefit plan (or any contract
held by such a plan) as defined in
paragraphs (2)(A) and (32) of section
3 of the Employee Retirement Income
1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; or

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

“(iii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate’s merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds; and

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

“(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and
oversight of entities that are systemically im-
portant or can significantly impact the financial
system of the United States.

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

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

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

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

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

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

“(B) the Office of the Comptroller of the
Currency, with respect to a swap dealer, major
swap participant, security-based swap dealer, or
major security-based swap participant that is—
“(i) a national bank; or

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

“(C) the Federal Deposit Insurance Corporation, with respect to a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System; and

“(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).”;

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

(A) by striking subparagraph (B);

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

(C) in subparagraph (C) (as so redesignated), by striking “and”;

(D) by inserting after subparagraph (C) (as so redesignated) the following:
“(D) a swap execution facility registered under section 5h;

“(E) a swap data repository; and”;

(19) by inserting after paragraph (42) (as redesignated by paragraph (1)) the following:

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

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

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

(21) by inserting after paragraph (47) (as redesignated by paragraph (1)) the following:

“(48) SWAP.—

“(A) IN GENERAL.—The term ‘swap’ means any agreement, contract, or transaction—

“(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the
value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

“(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

“(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associ-
ated with a future change in any such
value or level without also conveying a cur-
rent or future direct or indirect ownership
interest in an asset (including any enter-
prise or investment pool) or liability that
incorporates the financial risk so trans-
ferred, including any agreement, contract,
or transaction commonly known as—

"(I) an interest rate swap;

"(II) a rate floor;

"(III) a rate cap;

"(IV) a rate collar;

"(V) a cross-currency rate swap;

"(VI) a basis swap;

"(VII) a currency swap;

"(VIII) a foreign exchange swap;

"(IX) a total return swap;

"(X) a broad-based security
index swap;

"(XI) an equity index swap;

"(XII) an equity swap;

"(XIII) a debt index swap;

"(XIV) a debt swap;

"(XV) a credit spread;

"(XVI) a credit default swap;
“(XVII) a credit swap;
“(XVIII) a weather swap;
“(XIX) an energy swap;
“(XX) a metal swap;
“(XXI) an agricultural swap;
“(XXII) an emissions swap; and
“(XXIII) a commodity swap;
“(iv) that is an agreement, contract, or transaction that is, or in the future becomes, known as a swap; or
“(v) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in clauses (i) through (iv).
“(B) Exclusions.—The term ‘swap’ does not include—
“(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);
“(ii) any sale of a nonfinancial commodity or security for deferred shipment or
delivery, so long as the transaction is intended to be physically settled;

“(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or narrow-based index of securities, including any interest therein or based on the value thereof, that is subject to—

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


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

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

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

“(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis (not including any swap on a broad-based security index) that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

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

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

“(I) based on a security; and
“(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

“(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

“(x) any security-based swap.

“(C) Rule of Construction Regarding Master Agreements.—

“(i) In general.—Except as provided in clause (ii), the term ‘swap’ includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the
master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

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

“(D) Mixed Swaps.—Notwithstanding subparagraph (B)(x), an agreement, contract, or transaction that contains elements described in subparagraph (A) and elements of a security-based swap described in subparagraphs (A) through (C) of section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)) shall be considered to be a swap, unless the elements described in subparagraph (A) are de minimis, as determined by the Commission by rule, regulation, or order in consultation with the Securities and Exchange Commission.

“(E) Treatment of Foreign Exchange Swaps and Forward.
“(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both—

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

“(II) are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.

“(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be ef-
effective until it is submitted to the appropriate committees of Congress.

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

“(iv) BUSINESS STANDARDS.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and clause (ii), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

“(v) SECRETARY.—For purposes of this subparagraph only, the term ‘Secretary’ means the Secretary of the Treasury.

“(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—
“(i) REGISTERED ENTITIES.—Notwithstanding any written determination made under subparagraph (E), a swap shall include any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization.

“(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

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

“(50) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—
“(i) holds itself out as a dealer in
swaps;
“(ii) makes a market in swaps;
“(iii) regularly engages in the pur-
chase and sale of swaps in the ordinary
course of business; or
“(iv) engages in any activity causing
the person to be commonly known in the
trade as a dealer or market maker in
swaps.
“(B) INCLUSION.—A person may be des-
ignated as a swap dealer for a single type or
single class or category of swap or activities and
considered not to be a swap dealer for other
types, classes, or categories of swaps or activi-
ties.
“(51) SWAP EXECUTION FACILITY.—The term
’swap execution facility’ means a trading facility in
which multiple participants have the ability to exe-
cute or trade swaps by accepting bids and offers
made by other participants that are open to multiple
participants in the facility or system, through any
means of interstate commerce, including any trading
facility, that—
“(A) facilitates the execution of swaps between persons; and

“(B) is not a designated contract market.”; and

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

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term “commercial risk”; and

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

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

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking “except that” and all that follows through the period at the end and inserting the following: “except that—
“(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by title I of the Wall Street Transparency and Accountability Act of 2010—

“(i) with respect to—

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

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

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

“(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section
2(a)(1)(D)) if the Commission determines that the exemption would be consistent with the public interest.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(e)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(e)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking “section 1a(20)” and inserting “section 1a”;

and

(ii) in subitem (BB), by striking “section 1a(20)” and inserting “section 1a”;

and

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

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

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(10)”.
(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking “section 1a(4)” and inserting “section 1a(10)”.

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

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

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


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

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

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—
(A) in section 402—

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

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

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

   and

   (iv) in subsection (d)—

       (I) in the matter preceding paragraph (1), by striking “section 1a(4)” and inserting “section 1a(10)”;

       (II) in paragraph (1)—

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

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

       (III) in paragraph (2)—

           (aa) in subparagraph (A), by striking “section 1a(10)” and inserting “section 1a”;
(bb) in subparagraph (B), by striking “section 1a(12)(B)(ii)” and inserting “section 1a(19)(B)(ii)”; 

(cc) in subparagraph (C), by striking “section 1a(12)” and inserting “section 1a(19)”; and 

(dd) in subparagraph (D), by striking “section 1a(13)” and inserting “section 1a”; and 

(B) in section 404(1), by striking “section 1a(4)” and inserting “section 1a”. 

SEC. 112. JURISDICTION. 

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

(1) by inserting “the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and” after “otherwise provided in”; 

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

(3) by striking “contracts of sale” and inserting “swaps or contracts of sale”; and
(4) by striking “or derivatives transaction execution facility registered pursuant to section 5 or 5a” and inserting “pursuant to section 5”.

(b) PROHIBITION ON GAMING CONTRACTS.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(G) PROHIBITION ON GAMING CONTRACTS.—

“(i) IN GENERAL.—The Commission shall not approve for listing and trading, or permit to be listed and traded, on a board of trade, designated contract market, or any other facility which is registered with or under jurisdiction of the Commission any agreements, contracts, transactions, or swaps that constitute gaming contracts.

“(ii) REVIEW.—For purposes of compliance with this subparagraph, the Commission shall review any agreement, contract, or transaction in an excluded commodity which may be based on an occurrence, extent of an occurrence, or contingency to ensure compliance with this subparagraph.”.
(c) Regulation of Swaps Under Federal and State Law.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

“(h) Regulation of Swaps as Insurance Under State Law.—A swap—

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

“(2) may not be regulated as an insurance contract under the law of any State.

“(i) Regulation of Swaps as Securities Under Federal and State Law.—A swap (other than a security-based swap)—

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

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

(d) Agreements, Contracts, and Transactions Traded on an Organized Exchange.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

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

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

(3) by inserting after clause (i) the following:
“(ii) a swap; or”.

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

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

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

“(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.”.

SEC. 113. CLEARING.

(a) CLEARING REQUIREMENT.—

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

(A) by striking subsections (d), (e), (g), and (h); and
(B) by redesignating subsection (i) as subsection (g).

(2) Swaps; limitation on participation.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

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

“(e) Limitation on participation.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.”.

(3) Mandatory clearing of swaps.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is
amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

“(h) CLEARING REQUIREMENT.—

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

“(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

“(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.

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

“(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.

“(B) EXPEDITED RULEMAKING AUTHORITY.—
“(i) PROCEDURE.—The promulgation of regulations under subparagraph (A) and issuance of orders under subparagraph (F)(ii)(II)(aa) may be made without regard to—

“(I) the notice and comment provisions of section 553 of title 5, United States Code; and

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

“(ii) AGENCY RULEMAKING.—In carrying out subparagraph (A), and in issuing orders under subparagraph (F)(ii)(II)(aa), the Commission shall use the authority provided under section 808 of title 5, United States Code.

“(C) FACTORS.—In carrying out subparagraph (A), the Commission shall consider—

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

“(ii) as compared to other agreements, contracts, or transactions that are centrally cleared, whether any material differences exist;
“(iii) the impact on the mitigation of systemic risk, taking into account the size of the contract; or

“(iv) any other factor that the Commission determines to be appropriate.

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

“(i) shall review each swap, or any group, category, type, or class of swap for which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection (‘new swap’);

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

“(I) is not currently listed or proposed by a derivatives clearing organization; and

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

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

“(iv) shall provide a public comment period regarding the determination of the Commission as to whether the clearing requirements shall apply to the new swap or group, category, type, or class of swaps that are listed for clearing; and

“(v) not later than 90 days after the date on which a derivatives clearing organization certifies to the Commission that the derivatives clearing organization will list, or receives approval from the Commission to list, the new swap, or group, category, type, or class of swaps for clearing, shall make a determination under clause (iii).

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

“(F) MANDATORY CLEARING.—
“(i) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful to enter into a swap that is required to be cleared unless such swap shall be submitted for clearing.

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

“(I) the swap meets the criteria of the rules adopted by the Commission pursuant to subparagraph (A);

“(II) the Commission determines by order that—

“(aa) an existing swap or group, category, type, or class of swaps listed for clearing by a derivatives clearing organization as of the date of enactment of this subparagraph is required to be cleared; or

“(bb) a new swap or group, category, type, or class of swaps submitted under subparagraph (D) is required to be cleared; and
“(III) the swap is listed for clearing by a registered derivatives clearing organization.

“(G) PREVENTION OF EVASION.—

“(i) IN GENERAL.—The Commission may prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this Act.

“(ii) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular swap, group, category, type, or class of swaps would otherwise be subject to mandatory clearing but no derivatives clearing organization has listed the swap, group, category, type, or class of swaps for clearing, the Commission shall—

“(I) investigate the relevant facts and circumstances;

“(II) within 30 days issue a public report containing the results of the investigation; and
“(III) take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.

“(H) STAY OF CLEARING REQUIREMENT.—

“(i) IN GENERAL.—The Commission may, on its own initiative or upon application of a counterparty to a swap, stay the mandatory clearing requirement described in subparagraph (F) until the date on which the Commission completes a review of—

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

“(II) the clearing arrangement.

“(ii) DEADLINE.—Not later than 30 days after the date on which the Commission issues a stay under clause (i), the Commission shall make a determination in accordance with clause (iii).
“(iii) Determination.—Upon completion of the review carried out under clause (i), the Commission may—

“(I) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps, must be cleared pursuant to this subsection; or

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

“(3) End User Clearing Exemption.—

“(A) Definition of Commercial End User.—

“(i) In General.—In this paragraph, the term ‘commercial end user’ means any person other than a financial entity described in clause (ii) who, as its primary business activity, owns, uses, produces, processes, manufactures, distributes, merchandises, or markets goods, services, or
commodities (which shall include but not be limited to coal, natural gas, electricity, ethanol, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

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

“(I) a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant;

“(II) a person predominantly engaged in activities that are financial in nature;

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

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

“(B) END USER CLEARING EXEMPTION.—

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

"(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

"(bb) may elect to require clearing of the swap; and

"(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

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

"(C) TREATMENT OF AFFILIATES.—

"(i) IN GENERAL.—An affiliate of a commercial end user may make an election under subparagraph (B)(i) only if the affiliate, acting on behalf of the commercial end user and as an agent, uses the swap to hedge or mitigate the commercial risk of the commercial end user parent or other
affiliate of the commercial end user that is not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

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

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

“(VI) a commodity pool;

“(VII) a bank holding company with over $50,000,000,000 in consolidated assets; or
“(VIII) an affiliate of any entity
described in subclauses (I) through
(VII).

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

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

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

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

(b) COMMODITY EXCHANGE ACT.—Section 2 of the
Commodity Exchange Act (7 U.S.C. 2) is amended by
adding at the end the following:
“(j) Audit Committee Approval.—Exemptions from the requirements of subsection (h)(2)(F) to clear a swap and subsection (b) to trade a swap through a board of trade or swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) only if the issuer’s audit committee has reviewed and approved its decision to enter into swaps that are subject to such exemptions.”.

(c) Grandfather Provisions.—

(1) Legal certainty for certain transactions in exempt commodities.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) Consideration; authority of Commodity Futures Trading Commission.—The Commodity Futures Trading Commission—
(A) shall consider any petition submitted
under subparagraph (A) in a prompt manner;
and

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

(d) MANDATORY EXCHANGE TRADING.—

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

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

(A) if no designated contract market or
swap execution facility makes the swap avail-
able for trading; or
(B) involving a commercial end user who
opts to use the exemption under section
2(h)(3).

(3) AGRICULTURAL SWAPS.—

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

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

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

SEC. 114. SWAPS; SEGREGATION AND BANKRUPTCY TREAT-
MENT.

(a) SEREGATION REQUIREMENTS FOR CLEARED
SWAPS.—Section 4d of the Commodity Exchange Act (7
U.S.C. 6d) (as amended by section 122) is amended by
adding at the end the following:

“(f) SWAPS.—

“(1) REGISTRATION REQUIREMENT.—It shall
be unlawful for any person to accept any money, se-
curities, or property (or to extend any credit in lieu
of money, securities, or property) from, for, or on
behalf of a swaps customer or to margin, guarantee,
or secure a swap cleared by or through a derivatives
clearing organization (including money, securities, or
property accruing to the customer as the result of
such a swap), unless the person shall have registered
under this Act with the Commission as a futures
commission merchant, and the registration shall not
have expired nor been suspended nor revoked.

“(2) CLEARED SWAPS.—
“(A) Segregation required.—A futures commission merchant shall treat and deal with all money, securities, and property of any swaps customer received to margin, guarantee, or secure a swap cleared by or though a derivatives clearing organization (including money, securities, or property accruing to the swaps customer as the result of such a swap) as belonging to the swaps customer.

“(B) Commingling prohibited.—Money, securities, and property of a swaps customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or be used to margin, secure, or guarantee any trades or contracts of any swaps customer or person other than the person for whom the same are held.

“(3) Exceptions.—

“(A) Use of funds.—

“(i) In general.—Notwithstanding paragraph (2), money, securities, and property of a swaps customer of a futures commission merchant described in paragraph (2) may, for convenience, be com-
mingled and deposited in the same 1 or more accounts with any bank or trust company or with a derivatives clearing organization.

“(ii) WITHDRAWAL.—Notwithstanding paragraph (2), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

“(B) COMMISSION ACTION.—Notwithstanding paragraph (2), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swaps customer of a futures commission merchant described in paragraph (2) may be commingled
and deposited as provided in this section with any other money, securities, or property received by the futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swaps customer of the futures commission merchant.

“(4) PERMITTED INVESTMENTS.—Money described in paragraph (2) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

“(5) COMMODITY CONTRACT.—A swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swaps customer received by a futures commission merchant or a derivatives
clearing organization to margin, guarantee, or secure the swap (including money, securities, or property accruing to the customer as the result of the swap).

“(6) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.”.

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

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

“(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

“(ii) with respect to a futures commission merchant or a clearing organization, any other
contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization;’’; and

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

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

“(l) SEGREGATION REQUIREMENTS.—

“(1) SEGREGATION OF ASSETS HELD AS COLLATERAL IN UNCLEARED SWAP TRANSACTIONS.—

“(A) NOTIFICATION.—A swap dealer or major swap participant shall be required to notify the counterparty of the swap dealer or major swap participant at the beginning of a swap transaction that the counterparty has the right to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty.

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

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

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

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

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

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

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

“(I) the investment of segregated
funds or other property that may only be
invested in such investments as the Com-
mission may permit by rule or regulation;
and
“(II) the related allocation of gains
and losses resulting from any investment
of the segregated funds or other property.
“(3) USE OF INDEPENDENT THIRD-PARTY
CUSTODIANS.—The segregated account described in
paragraph (1) shall be—
“(A) carried by an independent third-party
custodian; and
“(B) designated as a segregated account
for and on behalf of the counterparty.
“(4) REPORTING REQUIREMENT.—If the
counterparty does not choose to require segregation
of the funds or other property supplied to margin,
guarantee, or secure the obligations of the
counterparty, the swap dealer or major swap partici-
pant shall report to the counterparty of the swap
dealer or major swap participant on a quarterly
basis that the back office procedures of the swap
dealer or major swap participant relating to margin
and collateral requirements are in compliance with
the agreement of the counterparties.”.
SEC. 115. DERIVATIVES CLEARING ORGANIZATIONS.

(a) Registration Requirement.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by striking subsections (a) and (b) and inserting the following:

"(a) Registration Requirement.—"

"(1) In general.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—"

"(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—"

"(i) excluded from this Act by subsection (a)(1)(C)(i), (e), or (f) of section 2; or

"(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(B) a swap."
“(2) Exception.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

“(b) Voluntary Registration.—A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.”.

(b) Registration for Banks and Clearing Agencies; Exemptions; Compliance Officer; Annual Reports.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

“(g) Required Registration for Banks and Clearing Agencies.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also licensed as a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(h) Existing Banks and Clearing Agencies.—

“(1) In general.—A bank or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934
(15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before the date of enactment of this subsection—

“(A) the bank cleared swaps as a multilateral clearing organization; or

“(B) the clearing agency cleared swaps.

“(2) CONVERSION OF BANK.—A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

“(i) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission determines that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission or the appropriate government authorities in the home country of the organization. Such conditions may include, but are not limited to, re-
quiring that the derivatives clearing organization be available for inspection by the Commission and make available all information requested by the Commission.

“(j) Designation of Chief Compliance Officer.—

“(1) In general.—Each derivatives clearing organization shall designate an individual to serve as a chief compliance officer.

“(2) Duties.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the derivatives clearing organization;

“(B) review the compliance of the derivatives clearing organization with respect to the core principles described in subsection (c)(2);

“(C) in consultation with the board of the derivatives clearing organization, a body performing a function similar to the board of the derivatives clearing organization, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
“(E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) ANNUAL REPORTS.—

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

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

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

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

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

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

(c) Core Principles for Derivatives Clearing
Organizations.—Section 5b(c) of the Commodity Ex-
change Act (7 U.S.C. 7a–1(c)) is amended by striking
paragraph (2) and inserting the following:

“(2) Core Principles for Derivatives
Clearing Organizations.—

“(A) Compliance.—
“(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

“(B) FINANCIAL RESOURCES.—

“(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

“(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clear-
ing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

“(I) enable the derivatives clearing organization to meet each financial obligation of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

“(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

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

“(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in,
the derivatives clearing organization;

and

"(II) appropriate standards for determining the eligibility of agreements, contracts, and transactions submitted to the derivatives clearing organization for clearing.

"(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

"(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

"(I) be objective;

"(II) be publicly disclosed; and

"(III) permit fair and open access.

"(D) RISK MANAGEMENT.—

"(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the
derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

“(ii) Measurement of Credit Exposure.—Each derivatives clearing organization shall—

“(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

“(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

“(iii) Limitation of Exposure to Potential Losses from Defaults.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the ex-
posure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

“(I) the operations of the derivatives clearing organization would not be disrupted; and

“(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

“(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

“(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

“(I) risk-based; and

“(II) reviewed on a regular basis.

“(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—
“(i) complete money settlements on a timely basis (but not less frequently than once each business day);

“(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

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

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

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

“(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

“(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.
“(F) TREATMENT OF FUNDS.—

“(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

“(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of loss or of delay in the access by the derivatives clearing organization to the assets and funds.

“(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

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

“(I) become insolvent; or

“(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

“(ii) Default procedures.—Each derivatives clearing organization shall—

“(I) clearly state the default procedures of the derivatives clearing organization;

“(II) make publicly available the default rules of the derivatives clearing organization; and

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

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

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

“(II) Rule enforcement.—Each derivatives clearing organization shall—
“(i) maintain adequate arrangements and resources for—

“(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

“(II) the resolution of disputes;

“(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

“(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

“(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

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

“(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

“(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

“(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

“(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

“(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

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

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

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

“(L) Public information.—

“(i) In general.—Each derivatives
clearing organization shall provide to mar-
et participants sufficient information to
enable the market participants to identify
and evaluate accurately the risks and costs
associated with using the services of the
derivatives clearing organization.

“(ii) Availability of information.—Each derivatives clearing organiza-
tion shall make information concerning the
rules and operating procedures governing
the clearing and settlement systems of the
derivatives clearing organization available
to market participants.

“(iii) Public disclosure.—Each de-
rivatives clearing organization shall dis-
lose publicly and to the Commission infor-
mation concerning—
“(I) the terms and conditions of each contract, agreement, and other transaction cleared and settled by the derivatives clearing organization;

“(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

“(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

“(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

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

“(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

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

“(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

“(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, a derivatives clearing organization may not—

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

“(ii) impose any material anticompetitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

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

“(I) to fulfill public interest re-

requirements; and
“(II) to support the objectives of owners and participants.

“(ii) Fitness standards.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

“(I) directors;

“(II) members of any disciplinary committee;

“(III) members of the derivatives clearing organization;

“(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

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

“(P) Conflicts of interest.—Each derivatives clearing organization shall—

“(i) establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the derivatives clearing organization; and
“(ii) establish a process for resolving conflicts of interest described in clause (i).

“(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

“(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.”.

(d) CONFLICTS OF INTEREST.—The Commodity Futures Trading Commission shall adopt rules mitigating conflicts of interest in connection with the conduct of business by a swap dealer or a major swap participant with a derivatives clearing organization, board of trade, or a swap execution facility that clears or trades swaps in which the swap dealer or major swap participant has a material debt or equity investment.

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

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

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

“(A) swaps data reported to swap data repositories; and

“(B) swaps traded on swap execution facilities.

“(3) INFORMATION SHARING.—Subject to section 8, and upon request, the Commission shall share information collected under paragraph (2) with—

“(A) the Board;

“(B) the Securities and Exchange Commission;

“(C) each appropriate prudential regulator;
“(D) the Financial Services Oversight Council;

“(E) the Department of Justice; and

“(F) any other person that the Commission determines to be appropriate, including—

“(i) foreign financial supervisors (including foreign futures authorities);

“(ii) foreign central banks; and

“(iii) foreign ministries.

“(4) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the Commission may share information with any entity described in paragraph (3)—

“(A) the Commission shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 8 relating to the information on swap transactions that is provided; and

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

“(5) PUBLIC INFORMATION.—Each derivatives clearing organization that clears swaps shall provide
to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).”.

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

(1) by inserting “, central bank and ministries,” after “department” each place it appears; and

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

(g) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

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

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

(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (e)—
(I) by striking “in the case” and all that follows through “a hybrid” and inserting “in the case of a hybrid”;

(II) by striking “; or” and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

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

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

“SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

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

“(1) the Commodity Exchange Act (7 U.S.C. 1 et seq.) shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under the Commodity Exchange Act (7 U.S.C. 1 et seq.) with respect to, an identified banking product; and
“(2) the definition of ‘security-based swap’ in section 3(a)(68) of the Securities Exchange Act of 1934 does not include any identified bank product.

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

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

“(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

“(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified bank product that—
“(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

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

“(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).”.

SEC. 116. RULEMAKING ON CONFLICT OF INTEREST.

(a) In General.—The Commodity Futures Trading Commission shall determine whether to adopt rules to establish limits on the control of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in Section 102 of
the Financial Stability Act of 2010) supervised by the Board of Governors of the Federal Reserve System, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

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

SEC. 117. PUBLIC REPORTING OF SWAP TRANSACTION DATA.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) is amended by adding at the end the following:

“(13) PUBLIC AVAILABILITY OF SWAP TRANSACTION DATA.—
“(A) Definition of Real-time Public Reporting.—In this paragraph, the term ‘real-time public reporting’ means to report data relating to a swap transaction as soon as technologically practicable after the time at which the swap transaction has been executed.

“(B) Purpose.—The purpose of this section is to authorize the Commission to make swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

“(C) General Rule.—The Commission is authorized and required to provide by rule for the public availability of swap transaction and pricing data as follows:

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

“(iii) With respect to swaps that are not cleared at a registered derivatives clearing organization and which are reported to a swap data repository or the Commission under subsection (h), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such swap trading volumes and positions.

“(D) Registered entities and public reporting.—The Commission may require registered entities to publicly disseminate the swap transaction and pricing data required to be reported under this paragraph.

“(E) Rulemaking required.—With respect to the rule providing for the public availability of transaction and pricing data for
swaps described in clauses (i) and (ii) of sub-
paragraph (C), the rule promulgated by the
Commission shall contain provisions—

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

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

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

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

“(F) Timeliness of reporting.—Par-
ties to a swap (including agents of the parties
to a swap) shall be responsible for reporting
swap transaction information to the appropriate
registered entity in a timely manner as may be
prescribed by the Commission.

“(14) Semiannual and annual public re-
porting of aggregate swap data.—
“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

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

“(ii) the market participants and developments in new products.

“(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from swap data repositories and derivatives clearing organizations; and

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

SEC. 118. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

“SEC. 21. SWAP DATA REPOSITORIES.

“(a) REGISTRATION REQUIREMENT.—
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“(1) IN GENERAL.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

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

“(3) COMPLIANCE WITH CORE PRINCIPLES.—

“(A) IN GENERAL.—To be registered, and maintain registration, as a swap data repository, the swap data repository shall comply with—

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

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data
repository complies with the core principles described in this subsection.

“(b) STANDARD SETTING.—

“(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.

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

“(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.

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

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

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

“(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;
“(4)(A) provide direct electronic access to the
Commission (or any designee of the Commission, in-
cluding another registered entity); and

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

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

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

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

“(A) each appropriate prudential regulator;

“(B) the Financial Services Oversight
Council;
“(C) the Securities and Exchange Commission;

“(D) the Department of Justice; and

“(E) any other person that the Commission determines to be appropriate, including—

“(i) foreign financial supervisors (including foreign futures authorities);

“(ii) foreign central banks;

“(iii) foreign ministries; and

“(8) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.

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

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

“(2) each entity shall agree to indemnify the swap data repository and the Commission for any
expenses arising from litigation relating to the information provided under section 8.

“(e) **Designation of Chief Compliance Officer.**—

“(1) **In General.**—Each swap data repository shall designate an individual to serve as a chief compliance officer.

“(2) **Duties.**—The chief compliance officer shall—

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

“(B) review the compliance of the swap data repository with respect to the core principles described in subsection (f);

“(C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

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

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

“(i) compliance office review;
“(ii) look-back;
“(iii) internal or external audit find-
ing;
“(iv) self-reported error; or
“(v) validated complaint; and

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

“(3) ANNUAL REPORTS.—

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

“(i) the compliance of the swap data
repository of the chief compliance officer
with respect to this Act (including regula-
tions); and
“(ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

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

“(1) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a swap data repository may not—

“(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or
“(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(2) Governance Arrangements.—Each swap data repository shall establish governance arrangements that are transparent—

“(A) to fulfill public interest requirements; and

“(B) to support the objectives of the Federal Government, owners, and participants.

“(3) Conflicts of Interest.—Each swap data repository shall—

“(A) establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the swap data repository; and

“(B) establish a process for resolving conflicts of interest described in subparagraph (A).

“(g) Required Registration for Swap Data Repositories.—Any person that is required to be registered as a swap data repository under this section shall register with the Commission regardless of whether that person is also licensed as a bank or registered with the Securities and Exchange Commission as a swap data repository.

“(h) Rules.—The Commission shall adopt rules governing persons that are registered under this section.”.
The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o-1) the following:

"SEC. 4r. REPORTING AND RECORDKEEPING FOR UNCLEARED SWAPS.

"(a) REQUIRED REPORTING OF SWAPS NOT ACCEPTED BY ANY DERIVATIVES CLEARING ORGANIZATION.—

"(1) IN GENERAL.—Each swap that is not accepted for clearing by any derivatives clearing organization shall be reported to—

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

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

"(2) TRANSITION RULE FOR PREENACTMENT SWAPS.—

"(A) SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enact-
ment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

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

“(C) Effective date.—The reporting provisions described in this section shall be effective upon the enactment of this section.

“(3) Reporting obligations.—

“(A) Swaps in which only 1 counterparty is a swap dealer or major swap participant.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (1) and (2).
“(B) Swaps in which 1 counterparty is a swap dealer and the other a major swap participant.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (1) and (2).

“(C) Other swaps.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (1) and (2).

“(b) Duties of certain individuals.—Any individual or entity that enters into a swap shall meet each requirement described in subsection (c) if the individual or entity did not—

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

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

“(e) Requirements.—An individual or entity described in subsection (b) shall—
“(1) upon written request from the Commission, provide reports regarding the swaps held by the individual or entity to the Commission in such form and in such manner as the Commission may request; and

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

“(A) any representative of the Commission;

“(B) an appropriate prudential regulator;

“(C) the Securities and Exchange Commission;

“(D) the Financial Services Oversight Council; and

“(E) the Department of Justice.

“(d) IDENTICAL DATA.—In prescribing rules under this section, the Commission shall require individuals and entities described in subsection (b) to submit to the Commission a report that contains data that is not less comprehensive than the data required to be collected by swap data repositories under section 21.”.
SEC. 120. LARGE SWAP TRADER REPORTING.

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

"SEC. 4r. LARGE SWAP TRADER REPORTING.

"(a) Prohibition.—

"(1) In general.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

"(A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

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

"(2) Exception.—Paragraph (1) shall not apply if—

"(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and
(B) of paragraph (1) as the Commission may require by rule or regulation; and

“(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

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

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

“(2) be open at all times to inspection and examination by any representative of the Commission.

“(c) APPLICABILITY.—For purposes of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include the swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

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

SEC. 121. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

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

“SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

“(a) Registration.—

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

“(2) Major swap participants.—It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

“(2) Contents.—

“(A) In general.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such in-
formation, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) CONTINUAL REPORTING.—A person that is registered as a swap dealer or major swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

“(4) RULES.—Except as provided in subsections (c), (e), and (f), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

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

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap
dealer or a major swap participant to permit any
person associated with a swap dealer or a major
swap participant who is subject to a statutory dis-
qualification to effect or be involved in effecting
swaps on behalf of the swap dealer or major swap
participant, if the swap dealer or major swap partici-

dant knew, or in the exercise of reasonable care
should have known, of the statutory disqualification.

“(c) Dual Registration.—

“(1) Swap Dealer.—Any person that is re-
quired to be registered as a swap dealer under this
section shall register with the Commission regardless
of whether the person also is a bank or is registered
with the Securities and Exchange Commission as a

security-based swap dealer.

“(2) Major Swap Participant.—Any person
that is required to be registered as a major swap
participant under this section shall register with the
Commission regardless of whether the person also is
a bank or is registered with the Securities and Ex-
change Commission as a major security-based swap
participant.

“(d) Rulemakings.—

“(1) In General.—The Commission shall
adopt rules for persons that are registered as swap
dealers or major swap participants under this section.

“(2) Exception for prudential requirements.—

“(A) In general.—The Commission may not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a prudential regulator.

“(B) Applicability.—Subparagraph (A) does not limit the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) Capital and margin requirements.—

“(1) General requirements.—

“(A) Bank swap dealers and major swap participants.—Each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, as the prudential regulators shall jointly prescribe by rule or regulation that—
“(i) help ensure the safety and soundness of the swap dealer and the major swap participant; and

“(ii) are appropriate for the risk associated with the uncleared swaps held as a swap dealer or major swap participant and the prudential regulators shall require significantly higher capital for swaps that are uncleared versus similar swaps that are cleared through a derivatives clearing organization.

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

“(i) help ensure the safety and soundness of the swap dealer and the major swap participant; and

“(ii) are appropriate for the risk associated with the uncleared swaps held as a
swap dealer or major swap participant and
the regulators shall require significantly
higher capital for swaps that are uncleared
versus similar swaps that are cleared
through a derivatives clearing organization.

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

“(i) a swap dealer;
“(ii) a major swap participant; or
“(iii) a financial entity as described in
section 2(h)(3)(A)(ii), and such
counterparty is eligible for and utilizing
the commercial end user clearing exemp-
tion under section 2(h)(3).

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

“(A) IN GENERAL.—The prudential regu-
lators, the Commission, and the Securities and
Exchange Commission shall periodically (but
not less frequently than annually) consult on
minimum capital requirements and minimum
initial and variation margin requirements.
“(B) COMPARABILITY.—The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements, including the use of non cash collateral, for—

“(i) swap dealers; and

“(ii) major swap participants.

“(3) RULEMAKINGS.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Not later than 180 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the prudential regulators, in consultation with the Commission, shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is a prudential regulator.

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

“(f) REPORTING AND RECORDKEEPING.—

“(1) IN GENERAL.—Each registered swap dealer

and major swap participant—

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

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

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

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

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

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of the swaps of the registered swap dealer and major swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

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

“(3) COUNTERPARTY RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each swap transaction.

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

“(5) Rules.—The Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

“(h) Business Conduct Standards.—

“(1) In General.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as may be prescribed by the Commission by rule or regulation that relate to—

“(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered swap dealer and major swap participant;

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

“(D) such other matters as the Commission determines to be appropriate.

“(2) Special Rule; Fiduciary Duties to Certain Entities.—

“(A) Governmental Entities.—A swap dealer that provides advice regarding, or offers
to enter into, or enters into a swap with a State, State agency, city, county, municipality, or other political subdivision or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision, or the Federal agency as appropriate.

“(B) PENSION PLANS; ENDOWMENTS; RETIREMENT PLANS.—A swap dealer that provides advice regarding, or offers to enter into, or enters into a swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate.

“(3) BUSINESS CONDUCT REQUIREMENTS.—

Business conduct requirements adopted by the Commission shall—

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

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

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

“(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap;

“(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

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

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

“(C) establish such other standards and requirements as the Commission may determine are appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.
“(4) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—The Commission shall adopt rules governing documentation and back office standards for swap dealers and major swap participants.

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

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

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

“(3) Disclosure of General Information.—The swap dealer or major swap participant shall disclose to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning—

“(A) terms and conditions of its swaps;

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

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

“(D) other information relevant to its trading in swaps.

“(4) Ability to Obtain Information.—The swap dealer or major swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request.
“(5) Conflicts of Interest.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity or swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this Act; and

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

“(6) Antitrust Considerations.—Unless specifically reviewed and approved by the Commission for antitrust purposes, the swap dealer or major swap participant shall not—
“(A) adopt any process or take any action that results in any unreasonable restraint of trade; or

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

“(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

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

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

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

“(B) review the compliance of the swap dealer or major swap participant with respect to the swap dealer and major swap participant requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;
“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations) relating to swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) ANNUAL REPORTS.—

“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—
“(i) the compliance of the swap dealer or major swap participant with respect to this Act (including regulations); and

“(ii) each policy and procedure of the swap dealer or major swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the swap dealer or major swap participant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

SEC. 122. CONFLICTS OF INTEREST.

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

(1) by redesignating subsection (c) as subsection (e); and

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

“(c) Conflicts of Interest.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

“(1) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in trading or clearing activities might potentially bias the judgment or supervision of the persons; and

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

“(d) Designation of Chief Compliance Officer.—

“(1) In General.—Each futures commission merchant shall designate an individual to serve as a chief compliance officer.

“(2) Duties.—The chief compliance officer shall—

“(A) report directly to the board or to the senior officer of the futures commission merchant;
“(B) review the compliance of the futures commission merchant with respect to requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this Act (including regulations and each rule prescribed by the Commission under this section) relating, but not limited, to—

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

“(ii) options on the contracts described in clause (i);

“(iii) commodity options;

“(iv) retail commodity transactions;

“(v) security futures products;

“(vi) leverage contracts; and

“(vii) swaps;
“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(3) ANNUAL REPORTS.—

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

“(i) the compliance of the futures commission merchant with respect to this Act (including regulations); and

“(ii) each policy and procedure of the futures commission merchant of the chief compliance officer (including the code of ethics and conflict of interest policies).
“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the futures commission merchant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

SEC. 123. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b-2) the following:

“SEC. 5h. SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—

“(1) IN GENERAL.—No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.

“(2) DUAL REGISTRATION.—Any person that is registered as a swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Se-
curities and Exchange Commission as a swap execution facility.

“(b) Trading and Trade Processing.—A swap execution facility that is registered under subsection (a) may—

“(1) make available for trading any swap; and

“(2) facilitate trade processing of any swap.

“(c) Trading by Contract Markets.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

“(d) Core Principles for Swap Execution Facilities.—

“(1) Compliance with core principles.—

“(A) In general.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

“(i) the core principles described in this subsection; and
“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) Reasonable discretion of swap execution facility.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

“(2) Compliance with rules.—A swap execution facility shall—

“(A) monitor and enforce compliance with any rule of the swap execution facility, including—

“(i) the terms and conditions of the swaps traded or processed on or through the swap execution facility; and

“(ii) any limitation on access to the swap execution facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect,
investigate, and enforce those rules, including means—

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

“(ii) to capture information that may be used in establishing whether rule violations have occurred;

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

“(D) provide by its rules that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement of section 2(h)(2)(F), the swap dealer or major swap participant shall be responsible for compliance with the mandatory trading requirement of section 113(d) of the Wall Street Transparency and Accountability Act of 2010.

“(3) Swaps not readily susceptible to manipulation.—The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.
“(4) MONITORING OF TRADING AND TRADE PROCESSING.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

“(ii) procedures for trade processing of swaps on or through the facilities of the swap execution facility; and

“(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

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

“(A) establish and enforce rules that will allow the facility to obtain any necessary infor-
mation to perform any of the functions described in this section;

“(B) provide the information to the Commission on request; and

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

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, a swap execution facility that is a trading facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

“(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

“(C) POSITION ENFORCEMENT.—For any contract that is subject to a position limitation established by the Commission pursuant to sec-
tion 4a(a), a swap execution facility shall reject any proposed swap transaction if, based on information readily available to a swap execution facility, any proposed swap transaction would cause a swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.

“(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearance and settlement of the swaps pursuant to section 2(h)(1).

“(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

“(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

“(A) IN GENERAL.—The swap execution facility shall make public timely information on
price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

“(B) Capacity of Swap Execution Facility.—The swap execution facility shall be required to have the capacity to electronically capture trade information with respect to transactions executed on the facility.

“(10) Recordkeeping and Reporting.—

“(A) In General.—A swap execution facility shall—

“(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

“(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act.

“(B) Requirements.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are
comparable to corresponding requirements for
derivatives clearing organizations and swap
data repositories.

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

“(A) adopting any rules or taking any ac-
tions that result in any unreasonable restraint
of trade; or

“(B) imposing any material anticompeti-
tive burden on trading or clearing.

“(12) CONFLICTS OF INTEREST.—The swap
execution facility shall—

“(A) establish and enforce rules to mini-
mize conflicts of interest in its decisionmaking
process; and

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

“(13) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The swap execution
facility shall have adequate financial, oper-
ational, and managerial resources to discharge
each responsibility of the swap execution facil-
ity.
“(B) Determination of resource adequacy.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

“(14) System safeguards.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for—

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligation of the swap execution facility; and
“(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

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

“(B) DUTIES.—The chief compliance officer shall—

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

“(ii) review compliance with the core principles in this subsection;

“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;
“(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

“(v) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

“(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints.

“(C) REQUIREMENTS FOR PROCEDURES.—In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(D) ANNUAL REPORTS.—

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

“(I) the compliance of the swap
execution facility with this Act; and

“(II) the policies and procedures,
including the code of ethics and con-
flict of interest policies, of the swap
execution facility.

“(ii) REQUIREMENTS.—The chief
compliance officer shall—

“(I) submit each report described
in clause (i) with the appropriate fi-
nancial report of the swap execution
facility that is required to be sub-
mitted to the Commission pursuant to
this section; and

“(II) include in the report a cer-
tification that, under penalty of law,
the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt,
conditionally or unconditionally, a swap execution facility
from registration under this section if the Commission
finds that the facility is subject to comparable, comprehen-
sive supervision and regulation on a consolidated basis by
the Securities and Exchange Commission, a prudential
regulator, or the appropriate governmental authorities in the home country of the facility.

“(f) RULES.—The Commission shall prescribe rules governing the regulation of alternative swap execution facilities under this section.”.

SEC. 124. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a-3) are repealed.

(b) CONFORMING AMENDMENTS.—

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

(A) in subsection (a)(1)(A), in the first sentence, by striking “or 5a”; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 113(a)(1)(B)), by striking “section 5a of this Act” and all that follows through “5d of this Act” and inserting “section 5b of this Act”.


(A) by striking “that—” and all that follows through “(i) has been designated” and inserting “that has been designated”;
(B) by striking “; or” and inserting “;

and” and

(C) by striking clause (ii).

SEC. 125. DESIGNATED CONTRACT MARKETS.

(a) CRITERIA FOR DESIGNATION.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) CORE PRINCIPLES FOR CONTRACT MARKETS.—

Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

“(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

“(1) DESIGNATION AS CONTRACT MARKET.—

“(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

“(i) any core principle described in this subsection; and

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) REASONABLE DISCRETION OF CONTRACT MARKET.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A)
shall have reasonable discretion in establishing
the manner in which the board of trade com-
plies with the core principles described in this
subsection.

“(2) Compliance with rules.—

“(A) In general.—The board of trade
shall establish, monitor, and enforce compliance
with the rules of the contract market, includ-
ing—

“(i) access requirements;

“(ii) the terms and conditions of any
contracts to be traded on the contract mar-
ket; and

“(iii) rules prohibiting abusive trade
practices on the contract market.

“(B) Capacity of contract market.—
The board of trade shall have the capacity to
detect, investigate, and apply appropriate sanc-
tions to any person that violates any rule of the
contract market.

“(C) Requirement of rules.—The rules
of the contract market shall provide the board
of trade with the ability and authority to obtain
any necessary information to perform any func-
tion described in this subsection, including the
capacity to carry out such international information-sharing agreements as the Commission may require.

“(3) Contracts not readily subject to manipulation.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

“(4) Prevention of market disruption.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

“(A) methods for conducting real-time monitoring of trading; and

“(B) comprehensive and accurate trade reconstructions.

“(5) Position limitations or accountability.—

“(A) In General.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary
and appropriate, position limitations or position accountability for speculators.

“(B) Maximum allowable position limitation.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

“(6) Emergency authority.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

“(A) to liquidate or transfer open positions in any contract;
“(B) to suspend or curtail trading in any contract; and
“(C) to require market participants in any contract to meet special margin requirements.

“(7) Availability of general information.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—
“(A) the terms and conditions of the contracts of the contract market; and

“(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

“(ii) the rules and specifications describing the operation of the contract market’s—

“(I) electronic matching platform; or

“(II) trade execution facility.

“(8) Daily Publication of Trading Information.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

“(9) Execution of Transactions.—

“(A) In general.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

“(B) Rules.—The rules of the board of trade may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;
“(ii) an exchange of—

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

“(II) futures for cash commodities; or

“(III) futures for swaps; or

“(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

“(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

“(A) to assist in the prevention of customer and market abuses; and

“(B) to provide evidence of any violations of the rules of the contract market.
“(11) Financial integrity of transactions.—The board of trade shall establish and enforce—

“(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

“(B) rules to ensure—

“(i) the financial integrity of any—

“(I) futures commission merchant; and

“(II) introducing broker; and

“(ii) the protection of customer funds.

“(12) Protection of markets and market participants.—The board of trade shall establish and enforce rules—

“(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

“(B) to promote fair and equitable trading on the contract market.
“(13) **DISCIPLINARY PROCEDURES.**—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

“(14) **DISPUTE RESOLUTION.**—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

“(15) **GOVERNANCE FITNESS STANDARDS.**—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

“(16) **CONFLICTS OF INTEREST.**—The board of trade shall establish and enforce rules—

“(A) to minimize conflicts of interest in the decisionmaking process of the contract market; and
“(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

“(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to promote the objectives of market participants.

“(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

“(A) in a form and manner that is acceptable to the Commission; and

“(B) for a period of at least 5 years.

“(19) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, the board of trade shall, to the maximum extent practicable, avoid—

“(A) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

“(B) imposing any material anticompetitive burden on trading on the contract market.

“(20) SYSTEM SAFEGUARDS.—The board of trade shall—
“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

“(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

“(21) FINANCIAL RESOURCES.—

“(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.
“(B) Determination of adequacy.—

The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.”.

SEC. 126. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking “, except-
ing the setting of levels of margin”;

(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), re-
respectively; and

(3) by inserting after subparagraph (C) the fol-
lowing:

“(D) margin requirements, provided that the rules, regulations, or orders shall—

“(i) be limited to protecting the finan-
cial integrity of the derivatives clearing or-
organization;
“(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

“(iii) not set specific margin amounts;”.

SEC. 127. POSITION LIMITS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after “(a)” the following:

“(1) IN GENERAL.—”;

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

(3) in the second sentence—

(A) by inserting “, including any group or class of traders,” after “held by any person”; and

(B) by striking “on an electronic trading facility with respect to a significant price discovery contract,” and inserting “swaps traded on or subject to the rules of an swaps execution facility, or swaps not traded on or subject to
the rules of an swaps execution facility that
perform a significant price discovery function
with respect to a registered entity,”; and
(4) by adding at the end the following:

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

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

“(B) with respect to an agreement, con-
tract, or transaction that settles against, or in
relation to, any price (including the daily or
final settlement price) of 1 or more contracts
listed for trading on a registered entity, con-
tracts traded on a foreign board of trade that
provides members or other participants located
in the United States with direct access to the
electronic trading and order matching system of
the foreign board of trade;
“(C) swaps traded on or subject to the rules of a swap execution facility; and

“(D) swaps not traded on or subject to the rules of a swap execution facility that perform or affect a significant price discovery function with respect to a registered entity.

“(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider, as appropriate, the following factors:

“(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a registered entity based on the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a registered entity based on the same underlying commodity so as to permit market participants
to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a registered entity are directly based on, or are determined by referencing, the price generated by the swap.

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a registered entity.

“(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

“(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class
of transactions from any requirement that the Commission establishes under this section with respect to position limits.”.

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility or facilities”; and

(2) in paragraph (2), by striking “or derivatives transaction execution facility or facilities or electronic trading facility” and inserting “or swap execution facility”.

SEC. 128. FOREIGN BOARDS OF TRADE.

(a) In General.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking “The Commission” and inserting the following:

“(2) Persons located in the United States.—

“(A) In general.—The Commission”;

(2) in the second sentence, by striking “Such rules and regulations” and inserting the following:
“(B) DIFFERENT REQUIREMENTS.—Rules and regulations described in subparagraph (A);”;

(3) in the third sentence—

(A) by striking “No rule or regulation” and inserting the following:

“(C) PROHIBITION.—Except as provided in paragraphs (1) and (2), no rule or regulation”; 

(B) by striking “that (1) requires” and inserting the following: “that—

“(i) requires”; and

(C) by striking “market, or (2) governs” and inserting the following: “market; or

“(ii) governs”; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:

“(1) FOREIGN BOARDS OF TRADE.—

“(A) IN GENERAL.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (in-
cluding the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

“(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

“(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

“(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction
traded on the foreign board of trade settles;

“(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

“(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

“(aa) the information that the foreign board of trade will make publicly available;
“(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

“(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and
“(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

“(B) Existing foreign boards of trade.—Subparagraph (A) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.”.

(b) Liability of registered persons trading on a foreign board of trade.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting “or by subsection (e)” after “Unless exempted by the Commission pursuant to subsection (e)”;}
(2) by adding at the end the following:

“(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).”.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 129) is amended by adding at the end the following:

“(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the fail-
ure of the foreign board of trade to comply with any provision of this Act.”.

SEC. 129. LEGAL CERTAINTY FOR SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

“(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

“(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

“(B) SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to an agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with
respect to, the agreement, contract, or trans-
action under this section or any other provision
of Federal or State law, based solely on the fail-
ure of the agreement, contract, or transaction—
“(i) to meet the definition of a swap
under section 1a; or
“(ii) to be cleared in accordance with
section 2(h)(1).
“(5) LEGAL CERTAINTY FOR LONG-TERM
SWAPS ENTERED INTO BEFORE THE DATE OF EN-
ACTMENT OF THE WALL STREET TRANSPARENCY
AND ACCOUNTABILITY ACT OF 2010.—
“(A) IN GENERAL.—Any swap entered into
before the date of enactment of the Wall Street
Transparency and Accountability Act of 2010,
the terms of which have not expired as of the
date of enactment, shall not be subject to the
mandatory clearing or margin requirements
under this Act.
“(B) EFFECT ON SWAPS.—Unless specifi-
cally reserved in the applicable bilateral trading
agreement, neither the enactment of the Wall
Street Transparency and Accountability Act of
2010, nor any requirement under that Act or
an amendment made by that Act, shall con-
stitute a termination event, force majeure, illegality, increased costs, regulatory change, or similar event under a bilateral trading agreement (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the bilateral trading agreement.

“(C) POSITION LIMITS.—Any position limit established under the Wall Street Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; provided, however, that such positions shall be attributed to the trader if the trader’s position is increased after the effective date such position limit rule, regulation, or order.”

SEC. 130. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.
SEC. 131. ENFORCEMENT.

(a) ENFORCEMENT AUTHORITY.—The Commodity Exchange Act is amended by inserting after section 4b (7 U.S.C. 6b) the following:

"SEC. 4b–1. ENFORCEMENT AUTHORITY.

"(a) COMMISSION.—Except as provided in sub-
sections (b), (c), and (d), the Commission shall have exclu-
sive authority to enforce the amendments made by the
Wall Street Transparency and Accountability Act of 2010
with respect to any person.

"(b) PRUDENTIAL REGULATORS.—The prudential
regulators shall have exclusive authority to enforce section
4s(e) and other prudential requirements of this Act with
respect to banks, and branches or agencies of foreign
banks that are swap dealers or major swap participants.

"(c) REFERRALS.—

"(1) PRUDENTIAL REGULATORS.—If the pru-
dential regulator for a swap dealer or major swap
participant has cause to believe that the swap dealer
or major swap participant, or any affiliate or divi-
sion of the swap dealer or major swap participant,
may have engaged in conduct that constitutes a vio-
lation of the nonprudential requirements of this Act
(including section 4s or rules adopted by the Com-
mission under that section), the prudential regulator
shall promptly notify the Commission in a written report that includes—

“(A) a request that the Commission initiate an enforcement proceeding under this Act; and

“(B) an explanation of the facts and circumstances that led to the preparation of the written report.

“(2) COMMISSION.—If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 4s or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

“(A) a request that the prudential regulator initiate an enforcement proceeding under this Act or any other Federal law (including regulations); and

“(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

“(d) BACKSTOP ENFORCEMENT AUTHORITY.—
“(1) Initiation of Enforcement Proceeding by Prudential Regulator.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

“(2) Initiation of Enforcement Proceeding by Commission.—If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a written report under subsection (c)(2), the Commission may initiate an enforcement proceeding.”.

(b) Conforming Amendments.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”;

(B) in subsection (b), by striking “or other agreement, contract or transaction subject to
paragraphs (1) and (2) of section 5a(g),” and
inserting “or swap,”; and

(C) by adding at the end the following:

“(e) It shall be unlawful for any person, directly or
indirectly, by the use of any means or instrumentality of
interstate commerce, or of the mails, or of any facility of
any registered entity, in or in connection with any order
to make, or the making of, any contract of sale of any
commodity for future delivery (or option on such a con-
tract), or any swap, on a group or index of securities (or
any interest therein or based on the value thereof) that
is a broad-based security index—

“(1) to employ any device, scheme, or artifice to
defraud;

“(2) to make any untrue statement of a mate-
rial fact or to omit to state a material fact necessary
in order to make the statements made, in the light
of the circumstances under which they were made,
not misleading; or

“(3) to engage in any act, practice, or course of
business which operates or would operate as a fraud
or deceit upon any person.”.

(2) Section 4c(a)(1) of the Commodity Ex-
change Act (7 U.S.C. 6c(a)(1)) is amended by in-
serting “or swap” before “if the transaction is used
or may be used”.

(3) Section 6(c) of the Commodity Exchange
Act (7 U.S.C. 9) is amended in the first sentence by
inserting “or of any swap,” before “or has willfully
made”.

(4) Section 6(d) of the Commodity Exchange
Act (7 U.S.C. 13b) is amended in the first sentence,
in the matter preceding the proviso, by inserting “or
of any swap,” before “or otherwise is violating”.

(5) Section 6c(a) of the Commodity Exchange
Act (7 U.S.C. 13a-1(a)) is amended in the matter
preceding the proviso by inserting “or any swap”
after “commodity for future delivery”.

(6) Section 9 of the Commodity Exchange Act
(7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting “or
of any swap,” before “or to corner”; and

(ii) in paragraph (4), by inserting
“swap data repository,” before “or futures
association” and

(B) in subsection (e)(1)—
(i) by inserting “swap data repository,” before “or registered futures association”; and

(ii) by inserting “, or swaps,” before “on the basis”.

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

“(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.”.

(8) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end the following:

“(11) SWAPS.—

“(A) IN GENERAL.—Subject to subparagraph (B), this section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap data repository, or swap execution facility, regardless of whether the dealer, participant, organization, repository, or facility is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of
the Currency is the appropriate Federal banking agency or prudential regulator for purposes of the amendments made by the Wall Street Transparency and Accountability Act of 2010.

“(B) LIMITATION.—The authority described in subparagraph (A) shall be limited by, and exercised in accordance with, section 4b–1 of the Commodity Exchange Act.”.

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

(A) by striking “(dd),” each place it appears;

(B) in clause (iii), by inserting “, and accounts or pooled investment vehicles described in clause (vi),” before “shall be subject to”; and

(C) by adding at the end the following:

“(vi) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.

(10) Section 2(c)(2)(C) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(C)) is amended—
(A) by striking “(dd),” each place it appears;

(B) in clause (ii)(I), by inserting “, and accounts or pooled investment vehicles described in clause (vii),” before “shall be subject to”; and

(C) by adding at the end the following:

“(vii) This Act applies to, and the Commission shall have jurisdiction over, an account or pooled investment vehicle that is offered for the purpose of trading, or that trades, any agreement, contract, or transaction in foreign currency described in clause (i).”.

(11) Section 1a(19)(A)(iv)(II) of the Commodity Exchange Act (7 U.S.C. 1a(19)(A)(iv)(II)) (as redesignated by section 111(a)(1)) is amended by inserting before the semicolon at the end the following: “provided, however, that for purposes of section 2(e)(2)(B)(vi) and section 2(e)(2)(C)(vii), the term ‘eligible contract participant’ shall not include a commodity pool in which any participant is not otherwise an eligible contract participant”.

SEC. 132. RETAIL COMMODITY TRANSACTIONS.

(a) In General.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

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

(2) in paragraph (2), by adding at the end the following:

“(D) Retail commodity transactions.—

“(i) Applicability.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

“(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

“(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.
“(ii) EXCEPTIONS.—This subpara-
graph shall not apply to—

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

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual deliv-
ery within 28 days or such other
period as the Commission may
determine by rule or regulation
based upon the typical commer-
cial practice in cash or spot mar-
kets for the commodity involved;
or

“(bb) creates an enforceable
obligation to deliver between a
seller and a buyer that have the
ability to deliver and accept deliv-
ery, respectively, in connection
with the line of business of the
seller and buyer; or
“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

“(iii) Enforcement.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

“(iv) Eligible Commercial Entity.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.
“(v) Actual Delivery.—For purposes of clause (ii)(III), the term ‘actual delivery’ does not include delivery to a third party in a financed transaction in which the commodity is held as collateral.”.

(b) Gramm-Leach-Bliley Act.—Section 206 of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78e note) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking “For purposes of” and inserting “Except as provided in subsection (e), for purposes of”; and

(2) by adding at the end the following:

“(e) Limitation of Definition of Identified Banking Product.—Except as provided in section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a), for purposes of section 131 of the Wall Street Transparency and Accountability Act of 2010, the term ‘identified banking product’ does not include a retail commodity transaction.”.

(c) Conforming Amendments Relating to Retail Foreign Exchange Transactions.—
(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (aa), by inserting “United States” before “financial institution”;

(B) by striking items (dd) and (ff);

(C) by redesignating items (ee) and (gg) as items (dd) and (ff), respectively; and

(D) in item (dd) (as so redesignated), by striking the semicolon and inserting “; or”.

(2) Section 2(c)(2) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)) (as amended by subsection (a)(2)) (as so redesignated), by striking the semicolon and inserting “; or”.

(E) PROHIBITION.—

“(i) DEFINITION OF FEDERAL REGULATORY AGENCY.—In this subparagraph, the term ‘Federal regulatory agency’ means—

“(I) the Commission;

“(II) the Securities and Exchange Commission;

“(III) an appropriate Federal banking agency;
“(IV) the National Credit Union Association; and

“(V) the Farm Credit Administration.

“(ii) PROHIBITION.—A person described in subparagraph (B)(i)(II) for which there is a Federal regulatory agency shall not offer to, or enter into with, a person that is not an eligible contract participant, any agreement, contract, or transaction in foreign currency described in subparagraph (B)(i)(I) except pursuant to a rule or regulation of a Federal regulatory agency allowing the agreement, contract, or transaction under such terms and conditions as the Federal regulatory agency shall prescribe.

“(iii) REQUIREMENTS OF RULES AND REGULATIONS.—

“(I) IN GENERAL.—The rules and regulations described in clause (ii) shall prescribe appropriate requirements with respect to—

“(aa) disclosure;

“(bb) recordkeeping;
“(ee) capital and margin;
(dd) reporting;
(ee) business conduct;
(ff) documentation; and
(gg) such other standards or requirements as the Federal regulatory agency shall determine to be necessary.

“(II) TREATMENT.—The rules or regulations described in clause (ii) shall treat all agreements, contracts, and transactions in foreign currency described in subparagraph (B)(i)(I), and all agreements, contracts, and transactions in foreign currency that are functionally or economically similar to agreements, contracts, or transactions described in subparagraph (B)(i)(I), similarly.”.

SEC. 133. OTHER AUTHORITY.

Unless otherwise provided by the amendments made by this title, the amendments made by this title do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and
SEC. 134. RESTITUTION REMEDIES.

Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a–1(d)) is amended by adding at the end the following:

“(3) EQUITABLE REMEDIES.—In any action brought under this section, the Commission may seek, and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation, equitable remedies including—

“(A) restitution to persons who have sustained losses proximately caused by such violation (in the amount of such losses); and

“(B) disgorgement of gains received in connection with such violation.”.

SEC. 135. ENHANCED COMPLIANCE BY REGISTERED ENTITI-

TIES.

(a) Core Principles for Contract Markets.—

Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) (as amended by section 125(b)) is amended by strik-

ing paragraph (1) and inserting the following:

“(1) Designation,—
“(A) IN GENERAL.—To be designated as, and to maintain the designation of, a board of trade as a contract market, the board of trade shall comply with—

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

“(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(B) DISCRETION OF BOARD OF TRADE.—

Unless the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner by which the board of trade complies with each core principle.”.

(b) CORE PRINCIPLES.—Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) (as amended by section 115(c)) is amended by striking subparagraph (A) and inserting the following:

“(A) REGISTRATION.—

“(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with—
“(I) the core principles described in this paragraph; and

“(II) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

“(ii) DISCRETION OF COMMISSION.— Unless the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle.”.

(e) Effect of Interpretation.—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

“(2) Effect of Interpretation.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).”.

(d) New Contracts, New Rules, and Rule Amendments.—

(1) In General.—A registered entity may elect to list for trading or accept for clearing any new contract or other instrument by providing to the
Commission and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

(2) Rule review.—

(A) In general.—Except as provided in clause (iii), each new rule or rule amendment described in subparagraph (A), including interpretations, shall become effective, pursuant to the certification of the registered entity, on the date that is 10 business days after the date on which the Commission receives the certification (or such shorter period as determined by the Commission by rule or regulation).

(B) Preclearance process for new rules.—

(i) In general.—Each registered entity that proposes to certify a new rule, rule amendment, or interpretation shall—
(I) not later than the date that is 7 business days before the date on which the registered entity certifies the new rule, provide notification to the Commission; and

(II) provide to the Commission a draft of the proposed rule or interpretation, background information, and such other information as the Commission may require.

(ii) Failure to follow preclearance requirements.—A new rule certified by a registered entity that does not meet each requirement described in subclause (I) shall not be valid.

(C) Exception.—Clause (i) shall not apply if the Commission notifies the registered entity in writing during the period described in clause (i) that the Commission has decided to object to the proposed certification on the grounds that the proposed certification is inconsistent with this Act (including regulations).

(3) Effectiveness of proposed rule or rule amendment.—If the Commission provides written notification to the registered entity under
subparagraph (B)(iii), the proposed certification shall be ineffective.

(4) PRIOR APPROVAL.—

(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(10) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request
agrees to an extension of the time limitation es-
tablished under this subparagraph.

(5) APPROVAL.—

(A) RULES AND INTERPRETATIONS.—The
Commission shall approve a new rule, rule
amendment, or interpretation of a registered
entity unless the Commission finds that the new
rule, rule amendment, or interpretation is in-
consistent with this Act (including regulations).

(B) CONTRACTS AND INSTRUMENTS.—The
Commission shall approve a new contract or
other instrument unless the Commission finds
that the new contract or other instrument
would violate this Act (including regulations).

(C) SPECIAL RULE FOR REVIEW AND AP-
PROVAL OF EVENT CONTRACTS AND SWAPS
CONTRACTS.—

(i) EVENT CONTRACTS.—In connec-
tion with the listing of any agreement, con-
tract, transaction, or swap in an excluded
commodity that is based upon an occur-
rence, extent of an occurrence, or contin-
gency by a designated contract market or
swap execution facility, the Commission
shall first make a written determination—
(I) whether such contract or swap constitutes a gaming contract; and

(II) if the Commission determines that the contract or swap does not constitute a gaming contract, then the Commission shall make a separate written determination as to whether the contract or swap is in the public interest, before the contract or swap may be offered, traded, or cleared under this Act.

(ii) SWAPS CONTRACTS.—

(I) IN GENERAL.—In connection with the listing of a swap for clearing by a derivatives clearing organization, the Commission shall determine, upon request or on its own motion, the initial eligibility, or the continuing qualification, of a derivatives clearing organization to clear such a swap under those criteria, conditions, or rules that the Commission, in its discretion, determines.
(II) REQUIREMENTS.—Any such criteria, conditions, or rules shall con-
sider—

(aa) the financial integrity of the derivatives clearing organi-
zation; and

(bb) any other factors which the Commission determines may be appropriate.

(iii) DEADLINE.—The Commission shall take final action under clauses (i) and (ii) in not later than 90 days from the commencement of its review unless the party seeking to offer the contract or swap agrees to an extension of this time limita-
tion.

(c) VIOLATION OF CORE PRINCIPLES.—Section 5e of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (d).

SEC. 136. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the fol-

lowing:

“(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or
agency of the Federal Government who, by virtue of
the employment or position of the employee or
agent, acquires information that may affect or tend
to affect the price of any commodity in interstate
commerce, or for future delivery, or any swap, and
which information has not been disseminated by the
department or agency of the Federal Government
holding or creating the information in a manner
which makes it generally available to the trading
public, or disclosed in a criminal, civil, or adminis-
trative hearing, or in a congressional, administrat-
ive, or Government Accountability Office report, hearing,
audit, or investigation, to use the information in his
personal capacity and for personal gain to enter
into, or offer to enter into—

"(A) a contract of sale of a commodity for
future delivery (or option on such a contract);

"(B) an option (other than an option exe-
cuted or traded on a national securities ex-
change registered pursuant to section 6(a) of
the Securities Exchange Act of 1934 (15
U.S.C. 78f(a)); or

"(C) a swap.

"(4) IMPARTING OF NONPUBLIC INFORMA-
tion.—It shall be unlawful—
“(A) for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

“(i) a contract of sale of a commodity for future delivery (or option on such a contract); 

“(ii) an option (other than an option executed or traded on a national securities
exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap; and

“(B) for any person knowingly to acquire, by any means whatsoever, governmental information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or in the exercise of reasonable care should know, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—
“(i) a contract of sale of a commodity for future delivery (or option on such a contract);

“(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

“(iii) a swap.

Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses (i), (ii) or (iii).”.

SEC. 137. ANTIDISRUPTIVE PRACTICES AUTHORITY.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6e(a)) (as amended by section 136) is amended by adding at the end the following:
“(5) DISRUPTIVE PRACTICES.—It shall be un-
lawful for any person to engage in any trading, prac-
tice, or conduct on or subject to the rules of a reg-
istered entity that—

“(A) violates bids or offers;

“(B) demonstrates intentional or reckless
disregard for the orderly execution of trans-
actions during the closing period; or

“(C) is, is of the character of, or is com-
monly known to the trade as, ‘spoofing’ (bid-
ding or offering with the intent to cancel the
bid or offer before execution).

“(6) RULEMAKING AUTHORITY.—The Commiss-
ion may make and promulgate such rules and regu-
lations as, in the judgment of the Commission, are
reasonably necessary to prohibit the trading prac-
tices described in paragraph (5) and any other trad-
ing practice that is disruptive of fair and equitable
trading.

“(7) USE OF SWAPS TO DEFRAUD.—It shall be
unlawful for any person to enter into a swap that
the person knows, or in the exercise of reasonable
care should have known, that its counterparty will or
could use the swap as part of a device, scheme, or
artifice to defraud a third party or the public or to violate any provision of law.”.

SEC. 138. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding at the end the following:

“SEC. 23. COMMODITY WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) Award.—

“(1) In general.—In any judicial or administrative action brought by the Commission under this Act that results in a monetary judgment exceeding $1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards of not less than 10 percent, in total, or exceeding an amount equal to 30 percent, in total, of the monetary judgment that has been collected in the action (or related actions) to 1 or more whistleblowers who voluntarily provided original information to the Commission that led to the successful resolution of the action.

“(2) Amount payable.—Any amount payable under paragraph (1) shall be paid from the fund described in subsection (f).
“(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—In determining the amount of an award, within the limit specified in subsection (a), the Commission may take into account the significance of the whistleblower’s information to the successful resolution of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission’s interest in deterring violations of the Act and regulations thereunder by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rule or regulation.

“(2) DENIAL OF AWARD.—

“(A) IN GENERAL.—No award under subsection (a) shall be made to any individual who—

“(i) is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any department or
agency of the Federal Government, a registered entity, a registered futures association, or a self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or

“(ii) fails to submit information to the Commission in such form as the Commission may, by rule or regulation, require.

“(B) DETERMINATION.—

“(i) IN GENERAL.—Subject to clause (ii), the Commission may determine to make an award to an individual under subsection (a) notwithstanding that such individual knowingly violated, assisted in the violation of, or caused to be violated any rule, regulation, or order of the Commission with respect to which the Commission or a court has imposed a monetary judgment.

“(ii) LIMITATION.—No award under subsection (a) shall be made to any individual who is convicted of a criminal violation related to the judicial or administrative action for which the individual other-
wise could receive an award under this section.

“(c) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously.

“(B) DISCLOSURE.—Prior to the payment of an award, a whistleblower must disclose his or her identity and provide such other information as the Commission may require.

“(d) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

“(e) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Commission. Any such determination may be appealed to the appropriate court of appeals of the United States not more
than 30 days after the determination is issued by the
Commission. The court shall review the determination
made by the Commission in accordance with section 7064
of title 5, United States Code.

“(f) Commodty Futures Trading Commission
Customer Protection Fund.—

“(1) Establishment.—There is established in
the Treasury of the United States a revolving fund
to be known as the ‘Commodity Futures Trading
Commission Customer Protection Fund’ (referred to
in this subsection as the ‘Fund’).

“(2) Use of Fund.—The Fund shall be avail-
able to the Commission, without further appropria-
tion or fiscal year limitation, for—

“(A) the payment of awards to whistle-
blowers as provided in subsection (a); and

“(B) the funding of customer education
initiatives designed to help customers protect
themselves against fraud or other violations of
this Act, or the rules and regulations there-
under.

“(3) Deposits and Credits.—There shall be
deposited into or credited to the Fund—

“(A) any monetary judgment collected by
the Commission in any judicial or administra-
tive action brought by the Commission under this Act, that is not otherwise distributed to victims of a violation of this Act or the rules and regulations thereunder underlying such action, unless the balance of the Fund at the time the monetary judgment is collected exceeds $100,000,000; and

“(B) all income from investments made under paragraph (4).

“(4) INVESTMENTS.—

“(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

“(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission.

“(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from
the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than October 30 of each year, the Commission shall transmit to the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report on—

“(A) the Commission’s whistleblower award program under this section, including a description of the number of awards granted and the types of cases in which awards were granted during the preceding fiscal year;

“(B) customer education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the beginning of the preceding fiscal year;

“(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;
“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

“(G) the amount paid from the Fund during the preceding fiscal year for customer education initiatives described in paragraph (2)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(g) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the Commission, or in assisting in any investigation or judicial or ad-
ministrative action of the Commission based upon or related to such information.

“(B) RELIEF.—

“(i) IN GENERAL.—Relief under subparagraph (A) shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay (with interest), and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(ii) FORUM.—An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

“(C) PROCEDURE.—

“(i) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

“(ii) STATUTE OF LIMITATIONS.—An action under this subsection may not be
brought more than 6 years after the date on which the violation reported in subpara-
graph (A) is committed, or more than 3 years after the date when facts material to
the right of action are known or reasonably should have been known by the whistle-
blower, but in no event after 10 years after the date on which the violation is com-
mitted.

“(2) CONFIDENTIALITY.—

“(A) INFORMATION PROVIDED.—

“(i) IN GENERAL.—Except as pro-
vided in subparagraph (B), all information provided to the Commission by a whistle-
blower shall be confidential and privileged as an evidentiary matter (and shall not be
subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of a department or agency of the Federal Government, under section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’) or otherwise, unless and until re-
required to be disclosed to a defendant or re-

spondent in connection with a public pro-
ceeding instituted by the Commission or
any entity described in subparagraph (B).

“(ii) CONSTRUCTION.—For purposes
of section 552 of title 5, United States
Code, this paragraph shall be considered a
statute described in subsection (b)(3)(B).

“(iii) EFFECT.—Nothing herein is in-
tended to limit the Attorney General’s abil-
ity to present such evidence to a grand
jury or to share such evidence with poten-
tial witnesses or defendants in the course
of an ongoing criminal investigation.

“(B) AVAILABILITY TO GOVERNMENT
AGENCIES.—Without the loss of its status as
confidential and privileged in the hands of the
Commission, all information referred to in sub-
paragraph (A) may, in the discretion of the
Commission, when determined by the Commis-

sion to be necessary or appropriate to accom-
plish the purposes of this Act and protect cus-
tomers, be made available to—

“(i) the Department of Justice;
“(ii) an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction;

“(iii) a registered entity, registered futures association, or self-regulatory organization as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

“(iv) a State attorney general in connection with any criminal investigation;

“(v) an appropriate department or agency of any State, acting within the scope of its jurisdiction; and

“(vi) a foreign futures authority, each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(h) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the pro-
visions of this section consistent with the purposes of this section.

“(i) DEFINITIONS.—In this section:

“(1) MONETARY JUDGMENT.—The term ‘monetary judgment’, when used with respect to any judicial or administrative action, means any monies (including but not limited to penalties, disgorgement, restitution, and interest) ordered to be paid as a result of such action or any settlement of such action.

“(2) ORIGINAL INFORMATION.—The term ‘original information’ means information that is—

“(A) based on the direct and independent knowledge or analysis of a whistleblower;

“(B) not known to the Commission from any other source; and

“(C) not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the initial source of the information that resulted in the judicial or administrative hearing, governmental report, hearing, audit, or investigation, or the news media’s report on the allegations.

“(3) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or ad-
ministrative action brought by the Commission under this Act, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information voluntarily provided by a whistleblower that led to the successful resolution of the Commission action.

“(4) SUCCESSFUL RESOLUTION.—The term ‘successful resolution’, when used with respect to any judicial or administrative action brought by the Commission under this Act, includes any settlement of such action.

“(5) WHISTLEBLOWER.—The term ‘whistleblower’ means an individual, or 2 or more individuals acting jointly, who submit information to the Commission as provided in this section.

“(j) IMPLEMENTING RULES.—The Commission shall issue final rules or regulations implementing the provisions of this section no later than 270 days after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(k) ORIGINAL INFORMATION.—Information submitted to the Commission by a whistleblower in accordance with rules or regulations implementing the provisions of this section shall not lose its status as original informa-
tion, as defined in subsection (i)(1), solely because the whistleblower submitted such information prior to the effective date of such rules or regulations, provided such information was submitted after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(l) AWARDS.—A whistleblower may receive an award pursuant to this section regardless of whether any violation of a provision of this Act, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(m) PROVISION OF FALSE INFORMATION.—A whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.”.

SEC. 139. CONFORMING AMENDMENTS.

(a) Section 2(e)(1) of the Commodity Exchange Act (7 U.S.C. 2(e)(1)) is amended, in the matter preceding
subparagraph (A), by striking “5a (to the extent provided in section 5a(g))”,

(b) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 114) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking “engage as” and inserting “be a”; and

(ii) by striking “or introducing broker” and all that follows through “or derivatives transaction execution facility”; and

(B) in paragraph (1), by striking “or introducing broker”; and

(C) in paragraph (2), by striking “if a futures commission merchant,”; and

(2) by adding at the end the following:

“(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.”.

(e) Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended—

(1) in paragraph (3)—
(A) by striking “(3) Subsection (1) of this section” and inserting the following:

“(3) EXCEPTION.—

“(A) IN GENERAL.—Paragraph (1)”; and

(B) by striking “to any investment trust” and all that follows through the period at the end and inserting the following: “to any commodity pool that is engaged primarily in trading commodity interests.

“(B) ENGAGED PRIMARILY.—For purposes of subparagraph (A), a commodity trading advisor or a commodity pool shall be considered to be ‘engaged primarily’ in the business of being a commodity trading advisor or commodity pool if it is or holds itself out to the public as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, owning, holding, or trading in commodity interests.

“(C) COMMODITY INTERESTS.—For purposes of this paragraph, commodity interests shall include contracts of sale of a commodity for future delivery, options on such contracts, security futures, swaps, leverage contracts, foreign exchange, spot and forward contracts on
physical commodities, and any monies held in
an account used for trading commodity inter-
est.”; and
(2) by adding at the end the following:
“(4) PREVENTION OF DUPLICATIVE FEDERAL
REGULATION.—
“(A) IN GENERAL.—Notwithstanding any
other provision of law and except as provided in
subparagraph (B), no commodity trading advi-
sor or commodity pool operator shall be subject
to the registration or related reporting require-
ments of another Federal agency if the com-
modity trading advisor or commodity pool oper-
ator—
“(i) operates, or acts as an advisor to,
only 1 or more commodity pools that—
“(I) would be an investment com-
pany as defined in section 3(a) of the
Investment Company Act of 1940 (15
U.S.C. 80a-3(a)) but for section
3(c)(7) of that Act; and
“(II) have in the aggregate less
than $5,000,000,000 in assets; and
“(ii)(I) was registered under this Act
as of January 1, 2009 and has remained
registered under this Act at all times since that date; or

“(II) in the case of a commodity trading advisor, has provided advice since January 1, 2009 only to 1 or more commodity pools of the type described in clause (i) the operators of which are, and have been at all times since January 1, 2009, registered under this Act.

“(B) Exception.—The Commission may—

“(i) require any commodity trading advisor or commodity pool operator described in subparagraph (A) to maintain such records of, and file with the Commission such reports regarding, commodity pools operated or advised by the commodity trading advisor or commodity pool operator as the Commission determines are necessary and appropriate for the assessment of systemic risk; and

“(ii) provide or make available to other Federal agencies for legitimate purposes within the jurisdiction of the agen-
cies those reports or records or the infor-

mation contained in the reports.

“(C) CLARIFICATION.—A commodity trad-
ing advisor or commodity pool operator that
fails to maintain continuous registration under
this Act after January 1, 2009, shall not be
covered under subparagraph (A) as of the date
of the lapse in registration.”.

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

(1) in subsection (a)(1)—

(A) by striking “, 5a(d),”; and

(B) by striking “and section (2)(h)(7) with
respect to significant price discovery con-
tracts,”; and

(2) in subsection (f)(1), by striking “section
4d(e) of this Act” and inserting “section 4d(e)”.

(e) Section 5e of the Commodity Exchange Act (7
U.S.C. 7b) is amended by striking “or revocation of the
right of an electronic trading facility to rely on the exemp-
tion set forth in section 2(h)(3) with respect to a signifi-
cant price discovery contract,”.

(f) Section 6(b) of the Commodity Exchange Act (7
U.S.C. 8(b)) is amended in the first sentence by striking
“, or to revoke the right of an electronic trading facility
to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,”.

(g) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking “section 2(c), 2(d), 2(f), or 2(g)
of this Act” and inserting “section 2(c), 2(f), or 2(i)
of this Act”; and

(2) by striking “2(h) or”.

(h) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking “section 4d(e)
of this Act” and inserting “section 4d(e)”.

(i) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking “sec-
tion 2(h)(7) or”.

(j) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C.
4421(2)(C)) is amended—

(1) by striking “section 2(c), 2(d), 2(f), or
(2)(g) of such Act” and inserting “section 2(c), 2(f),
or 2(i) of that Act”; and

(2) by striking “2(h) or”.

SEC. 140. STUDY ON OVERSIGHT OF CARBON MARKETS.

(a) INTERAGENCY WORKING GROUP.—There is es-
tablished to carry out this section an interagency working
group (referred to in this section as the “interagency group”) composed of the following members or designees:

1. The Chairman of the Commodity Futures Trading Commission (referred to in this section as the “Commission”), who shall serve as Chairman of the interagency group.

2. The Secretary of Agriculture.

3. The Secretary of the Treasury.

4. The Chairman of the Securities and Exchange Commission.

5. The Administrator of the Environmental Protection Agency.


8. The Administrator of the Energy Information Administration.

(b) Administrative Support.—The Commission shall provide the interagency group such administrative support services as are necessary to enable the interagency group to carry out the functions of the interagency group under this section.

(c) Consultation.—In carrying out this section, the interagency group shall consult with representatives of ex-
changes, clearinghouses, self-regulatory bodies, major carbon market participants, consumers, and the general public, as the interagency group determines to be appropriate.

(d) Study.—The interagency group shall conduct a study on the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

(e) Report.—Not later than 180 days after the date of enactment of this Act, the interagency group shall submit to Congress a report on the results of the study conducted under subsection (b), including recommendations for the oversight of existing and prospective carbon markets to ensure an efficient, secure, and transparent carbon market, including oversight of spot markets and derivative markets.

SEC. 141. ENERGY AND ENVIRONMENTAL MARKETS ADVISORY COMMITTEE.

Section 2(a) of the Commodity Exchange Act (7 U.S.C. 2(a)) (as amended by section 117) is amended by adding at the end the following:

“(15) Energy and environmental markets advisory committee.—

“(A) Establishment.—
“(i) **IN GENERAL.**—An Energy and Environmental Markets Advisory Committee is hereby established.

“(ii) **MEMBERSHIP.**—The Committee shall have 9 members.

“(iii) **ACTIVITIES.**—The Committee’s objectives and scope of activities shall be—

“(I) to conduct public meetings;

“(II) to submit reports and recommendations to the Commission (including dissenting or minority views, if any); and

“(III) otherwise to serve as a vehicle for discussion and communication on matters of concern to exchanges, firms, end users, and regulators regarding energy and environmental markets and their regulation by the Commission.

“(B) **REQUIREMENTS.**—

“(i) **IN GENERAL.**—The Committee shall hold public meetings at such intervals as are necessary to carry out the functions of the Committee, but not less frequently than 2 times per year.
“(ii) Members.—Members shall be appointed to 3-year terms, but may be removed for cause by vote of the Commission.

“(C) Appointment.—The Commission shall appoint members with a wide diversity of opinion and who represent a broad spectrum of interests, including hedgers and consumers.

“(D) Reimbursement.—Members shall be entitled to per diem and travel expense reimbursement by the Commission.

“(E) FACA.—The Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

SEC. 142. EFFECTIVE DATE.

Unless otherwise provided in this title, this title shall take effect on the date that is 180 days after the date of enactment of this Act.

TITLE II—REGULATION OF SECURITY-BASED SWAP MARKETS

SEC. 201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) Definitions.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—
(1) in subparagraphs (A) and (B) of paragraph (5), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after “securities” each place that term appears;

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

(3) in paragraph (13), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(4) in paragraph (14), by adding at the end the following: “For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”;

(5) in paragraph (39)—

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

(B) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (C); and

(D) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (D); and

(6) by adding at the end the following:

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

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

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

“(i) maintains a substantial position in security-based swaps for any of the major security-based swap categories as determined by the Commission, excluding—

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

“(II) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (2)(A) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; or

“(ii) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse ef-
fects on the financial stability of the United States banking system or financial markets; or

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

“(II) maintains a substantial position in outstanding security-based swaps in any major security-based swap category as determined by the Commission.

“(iv) Definition of substantial position.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term ‘substantial position’ at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

“(v) Scope of designation.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major
security-based swap participant for all classes of security-based swaps.

“(68) SECURITY-BASED SWAP.—

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

“(i) would be a swap under section 1a(35) of the Commodity Exchange Act; and

“(ii) is based on—

“(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

“(II) a single security or loan, including any interest therein or on the value thereof; or

“(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial
condition, or financial obligations of
the issuer.

“(B) Rule of construction regarding
master agreements.—The term ‘security-
based swap’ shall be construed to include a
master agreement that provides for an agree-
ment, contract, or transaction that is a secu-
rity-based swap pursuant to subparagraph (A),
together with all supplements to any such mas-
ter agreement, without regard to whether the
master agreement contains an agreement, con-
tract, or transaction that is not a security-based
swap pursuant to subparagraph (A), except
that the master agreement shall be considered
to be a security-based swap only with respect to
each agreement, contract, or transaction under
the master agreement that is a security-based
swap pursuant to subparagraph (A).

“(C) Exclusions.—The term ‘security-
based swap’ does not include any agreement,
contract, or transaction that meets the defini-
tion of a security-based swap only because it
referencees, is based upon, or settles through the
transfer, delivery, or receipt of an exempted se-
curity under paragraph (12), as in effect on the
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date of enactment of the Futures Trading Act
of 1982 (other than any municipal security as
defined in paragraph (29) as in effect on the
date of enactment of the Futures Trading Act
of 1982), unless such agreement, contract, or
transaction is of the character of, or is com-
monly known in the trade as, a put, call, or
other option; or

“(D) Mixed swaps.—The term ‘security
based swap’ does not include any agreement,
contract, or transaction that is determined to
be a swap pursuant to paragraph (47)(F) of
section 1a of the Commodity Exchange Act (7

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

“(70) Person associated with a security-
based swap dealer or major security-based
swap participant.—The term ‘person associated
with a security-based swap dealer or major security-
based swap participant’ or ‘associated person of a
security-based swap dealer or major security-based
swap participant’ means any partner, officer, direc-
tor, or branch manager of such security-based swap
dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

“(71) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person that—

“(i) holds itself out as a dealer in security-based swaps;

“(ii) makes a market in security-based swaps;

“(iii) regularly engages in the purchase and sale of security-based swaps in the ordinary course of a business; or

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

“(B) DESIGNATION BY TYPE OR CLASS.—
A person may be designated as a security-based
swap dealer for a single type or single class or
category of security-based swap or activities
and considered not to be a security-based swap
dealer for other types, classes, or categories of
security-based swaps or activities.

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

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

“(74) PRUDENTIAL REGULATOR.—The term
‘prudential regulator’ has the same meaning as in
section 1a of the Commodity Exchange Act (7

“(75) SWAP DATA REPOSITORY.—The term
‘swap data repository’ means any person that col-
lects, calculates, prepares, or maintains information
or records with respect to transactions or positions
in, or the terms and conditions of, security-based
swaps entered into by third parties.
“(76) Swap dealer.—The term ‘swap dealer’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

“(77) Swap execution facility.—The term ‘swap execution facility’ means a trading facility in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, or confirmation facility, that—

“(A) facilitates the execution of security-based swaps between persons; and

“(B) is not a designated contract market.

“(78) Broad-based security index.—The term ‘broad-based security index’ has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”.

(b) Authority to Further Define Terms.—The Securities and Exchange Commission may, by rule, further define the terms “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, and “eligible contract participant” with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been struc-
(c) **Other Incorporated Definitions.**—Except as the context otherwise requires, in this title, the terms “prudential regulator”, “swap”, “swap dealer”, “major swap participant”, “swap data repository”, “associated person of a swap dealer or major swap participant”, “eligible contract participant”, “swap execution facility”, “broad-based security index”, “security-based swap”, “security-based swap dealer”, “major security-based swap participant”, “swap data repository”, and “associated person of a security-based swap dealer or major security-based swap participant” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by this Act.

**SEC. 202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAP AGREEMENTS.**


(b) **Conforming Amendments to the Securities Act of 1933.**—

(1) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b-1) is repealed.
(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting "(including security-based swaps)" after "securities"; and

(ii) by striking "or any security-based swap agreement (as defined in Section 206B of the Gramm-Leach-Bliley Act)"); and

(B) by striking subsection (d).


(1) by striking section 3A (15 U.S.C. 78c–1); and

(2) in section 9 (15 U.S.C. 78i(a))—

(A) in subsection (a), by striking paragraphs (2) through (5) and inserting the following:

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the
purpose of inducing the purchase or sale of such security by others.

“(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

“(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap, any statement which was at the time and in the light of the circumstances under which
it was made, false or misleading with respect to any material fact, and which that person knew or had reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a broker, dealer, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.”;

(3) by striking subsection (i);

(4) in section 10 (15 U.S.C. 78j), by striking “or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” and by striking the matter following subsection (b);

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (c)(1)(A), by striking “or any security-based swap agreement (as defined
in section 206B of the Gramm-Leach-Bliley Act),”;

(B) in subparagraphs (B) and (C) of subsection (c)(1), by striking “or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the phrase appears; and

(C) by striking subsection (i);

(6) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking “or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78e note)) involving such equity security,”;

(B) in subsection (a)(3)(B), by striking “, and such purchases and sales of the security-based swap agreements” and inserting the word “and” before the word “any”; 

(C) in the first sentence of subsection (b), by striking “or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving any such equity security” and by striking “or security-
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based swap agreement” in each place that the
phrase appears;

(D) in the third sentence of subsection (b),
by striking “or security-based swap agreement
(as defined in section 206B of the Gramm-
Leach Bliley Act)”; and

(E) by striking subsection (g);

(7) in section 20 (15 U.S.C. 78t)—

(A) in subsection (d), by striking “or secu-

rity-based swap agreement (as defined in sec-

tion 206B of the Gramm-Leach-Bliley Act)”

and inserting “or” before the word “privilege”;

and

(B) by striking subsection (f); and

(8) in section 21A (15 U.S.C. 78u–1)—

(A) in subsection (a)(1), by striking “or

security-based swap agreement (as defined in

section 206B of the Gramm-Leach-Bliley Act)”;

and

(B) by striking subsection (g).

SEC. 203. AMENDMENTS TO THE SECURITIES EXCHANGE

ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The


is amended by inserting after section 3A:
“SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

“(a) CLEARING REQUIREMENT.—

“(1) OPEN ACCESS.—Each clearing agency registered under this title (in this section referred to as a ‘registered clearing agency’) shall—

“(A) prescribe that all security-based swaps with the same terms and conditions are economically equivalent and may be offset with each other within the registered clearing agency; and

“(B) provide for nondiscriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

“(2) SECURITY-BASED SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

“(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 security-based swap, or any group, category, type, or class of security-based swap is required to be cleared.
“(B) Expedited rulemaking authority.—

“(i) Procedure.—The promulgation of regulations under subparagraph (A) and issuance of orders under subparagraph (F)(ii)(II)(aa) may be made without regard to—

“(I) the notice and comment provisions of section 553 of title 5, United States Code; and

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

“(ii) Agency rulemaking.—In carrying out subparagraph (A), and in issuing orders under subparagraph (F)(ii)(II)(aa), the Commission shall use the authority provided under section 808 of title 5, United States Code.

“(C) Factors.—In carrying out subparagraph (A), the Commission may consider—

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

“(ii) as compared to other agreements, contracts, or transactions that are
centrally cleared, whether any material differ-
ences exist;

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

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

“(D) COMMISSION REVIEW OF NEW SECU-
RITY-BASED SWAPS.—The Commission—

“(i) shall review each security-based
swap, or any group, category, type, or class
of security-based swap for which a reg-
istered clearing agency notifies the Com-
mission that the registered clearing agency
plans to list for clearing after the date of
enactment of this subsection (‘new secu-
ry-based swap’);

“(ii) may review any security-based
swap, or any group, category, type, or class
of security-based swap that—

“(I) is not currently listed or pro-
posed by a registered clearing agency;

and

“(II) the Commission determines
to be appropriate for review;
“(iii) shall determine by order whether
the new security-based swap, or group, cat-
egory, type, or class of security-based
swaps being listed for clearing is required
to be cleared based on the criteria estab-
lished in the rule adopted by the Commis-
sion under subparagraph (A);

“(iv) shall provide a public comment
period regarding the determination of the
Commission as to whether the clearing re-
quirements shall apply to the new security-
based swap or group, category, type, or
class of security-based swaps that are list-
ed for clearing; and

“(v) not later than 90 days after the
date on which a registered clearing agency
certifies to the Commission that the reg-
istered clearing agency will list, or receives
approval from the Commission to list, the
new security-based swap, or group, cat-
egory, type, or class of security-based
swaps for clearing, shall make a deter-
mination under clause (iii).

“(E) EFFECT.—Nothing in subparagraph
(D) affects the ability of the registered clearing
agency described in that subparagraph to list for permissive clearing any security-based swap, or group, category, type, or class of security-based swaps.

“(F) MANDATORY CLEARING.—

“(i) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful to enter into a security-based swap that is required to be cleared unless such security-based swap shall be submitted for clearing.

“(ii) REQUIREMENTS.—The security-based swap shall be submitted for clearing if—

“(I) the security-based swap meets the criteria of the rules adopted by the Commission pursuant to subparagraph (A);

“(II) the Commission determines by order that—

“(aa) an existing security-based swap or group, category, type, or class of security-based swaps listed for clearing by a registered clearing agency as of the date of enactment of this
subparagraph is required to be cleared; or

“(bb) a new security-based swap or group, category, type, or class of security-based swaps submitted under subparagraph (D) is required to be cleared; and

“(III) the security-based swap is listed for clearing by a registered clearing agency.

“(G) PREVENTION OF EVASION.—

“(i) IN GENERAL.—The Commission may prescribe rules under this subsection (and issue interpretations of rules prescribed under this subsection) as determined by the Commission to be necessary to prevent evasions of the mandatory clearing requirements under this title.

“(ii) DUTY OF COMMISSION TO INVESTIGATE AND TAKE CERTAIN ACTIONS.—To the extent the Commission finds that a particular security-based swap, group, category, type, or class of security-based swaps would otherwise be subject to mandatory clearing but no registered clearing
agency has listed the security-based swap, group, category, type, or class of security-based swaps for clearing, the Commission shall—

“(I) investigate the facts and circumstances surrounding the situation; and

“(II) issue a public report regarding the security-based swap in question and take such actions as the Commission determines to be necessary and in the public interest.

“(H) STAY OF CLEARING REQUIREMENT.—

“(i) IN GENERAL.—The Commission may, on its own initiative or upon application of a counterparty to a security-based swap, stay the mandatory clearing requirement described in subparagraph (F) until the date on which the Commission completes a review of—

“(I) the terms of the security-based swap or the group, category, type, or class of security-based swaps; and
“(II) the clearing arrangement.

“(ii) Deadline.—Not later than 30 days after the date on which the Commission issues a stay under clause (i), the Commission shall make a determination in accordance with clause (iii).

“(iii) Determination.—Upon completion of the review carried out under clause (i), the Commission may—

“(I) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be cleared pursuant to this subsection; or

“(II) determine that the clearing mandate described in subparagraph (F) shall not apply to the security-based swap, group, category, type, or class of security-based swaps.

“(3) End User Clearing Exemption.—

“(A) Definition of Commercial End User.—
“(i) In general.—In this paragraph, the term ‘commercial end user’ means any person other than a financial entity described in clause (ii) who, as its primary business activity, owns, uses, produces, processes, manufactures, distributes, merchandises, or markets services or commodities (which shall include but not be limited to coal, natural gas, electricity, ethanol, crude oil, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

“(ii) Financial entity.—The term ‘financial entity’ means—

“(I) a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant;

“(II) a person predominantly engaged in activities that are financial in nature;

“(III) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) or a commodity pool as defined
in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

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

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a security-based swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the security-based swap is a commercial end user that counterparty—

“(I)(aa) may elect not to clear the security-based swap, as required under paragraph (2); or

“(bb) may elect to require clearing of the security-based swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

“(ii) LIMITATION.—A commercial end user may only make an election under
clause (i) if the end user is using the security-based swap to hedge commercial risk.

“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a commercial end user may make an election under subparagraph (B)(i) only if the affiliate uses the security-based swap to hedge or mitigate the commercial risk of the commercial end user parent or other affiliates of the commercial end user.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a security-based swap dealer;

“(II) a security-based security-based swap dealer;

“(III) a major security-based swap participant;

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

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

“(VI) a commodity pool;

“(VII) a bank holding company with over $50,000,000,000 in consolidated assets; or

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

“(iii) ABUSE OF EXEMPTION.—The Commission may prescribe such rules, or issue interpretations of the rules, as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B).

“(D) OPTION TO CLEAR.—With respect to any security-based swap listed for clearing by a clearing agency and entered into by a security-based swap dealer or a major security-based swap participant with any other counterparty, the counterparty—

“(i) may elect to require clearing of the security-based swap; and
“(ii) if the counterparty makes an election under clause (i), shall have the sole right to select the clearing agency at which the security-based swap will be cleared.

“(b) Audit Committee Approval.—Exemptions from the requirements of this section to clear or trade a security-based swap through a national securities exchange or security-based swap execution facility shall be available to a counterparty that is an issuer of securities that are registered under section 12 or that is required to file reports pursuant to section 15(d), only if the issuer’s audit committee has reviewed and approved its decision to enter into security-based swaps that are subject to such exemptions.

“(c) Public Availability of Security-Based Swap Transaction Data.—

“(1) In general.—

“(A) Definition of real-time public reporting.—In this paragraph, the term ‘real-time public reporting’ means to report data relating to a security-based swap transaction as soon as technologically practicable after the time at which the security-based swap transaction has been executed.
“(B) PURPOSE.—The purpose of this section is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

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

“(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in subsection (a)(2) (including those security-based swaps that are exempted from those requirements), the Commission shall require real-time public reporting for such transactions.

“(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in subsection (a)(2), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.
“(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a swap data repository or the Commission under subsection (a), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such security-based swap trading volumes and positions.

“(D) Registered entities and public reporting.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

“(E) Rulemaking required.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

“(i) to ensure such information does not identify the participants;
“(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

“(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

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

“(F) Timeliness of Reporting.—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

“(2) Semiannual and Annual Public Reporting of Aggregate Security-Based Swap Data.—

“(A) In General.—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual
basis to make available to the public information relating to—

“(i) the trading and clearing in the major security-based swap categories; and

“(ii) the market participants and developments in new products.

“(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

“(i) use information from security-based swap data repositories and clearing agencies; and

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

“(C) TRANSITION RULE FOR PREENACTMENT SECURITY-BASED SWAPS.—

“(i) SECURITY-BASED SWAPS ENTERED INTO BEFORE THE DATE OF ENACTMENT OF THE WALL STREET TRANSPARENCY AND ACCOUNTABILITY ACT OF 2010.—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Account-
ability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered swap data repository or the Commission by a date that is not later than—

“(I) 30 days after the date of issuance of the interim final rule; or

“(II) such other period as the Commission determines to be appropriate.

“(ii) COMMISSION RULEMAKING.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date of enactment as referenced in clause (i).

“(D) EFFECTIVE DATE.—The reporting provisions described in this paragraph shall be effective upon the date of enactment of this section.

“(d) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—
“(1) IN GENERAL.—Each registered clearing agency and security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

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

“(A) report directly to its board or to the senior officer;

“(B) review its compliance with respect to the core principles described in this title;

“(C) in consultation with its board, a body performing a function similar thereto, or the senior officer of the registered clearing agency, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(E) ensure compliance with this title (including regulations issued under this title) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the compliance officer through any—
“(i) compliance office review;
“(ii) look-back;
“(iii) internal or external audit finding;
“(iv) self-reported error; or
“(v) validated complaint; and
“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) ANNUAL REPORTS.—
“(A) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—
“(i) the compliance of the registered clearing agency or security-based swap execution facility of the compliance officer with respect to this title (including regulations under this title); and
“(ii) each policy and procedure of the registered clearing agency of the compliance officer (including the code of ethics and conflict of interest policies of the registered clearing agency).
“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the registered clearing agency that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.”.

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

“(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to a security-based swap.

“(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this title may register with the Commission as a clearing agency.
“(i) Standards for Clearing Agencies Clearing Swap Transactions.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

“(j) Rules.—The Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this title.

“(k) Exemptions.—

“(1) In General.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission
or the appropriate government authorities in the home country of the agency.

“(2) Derivatives Clearing Organizations.—A person that is required to be registered as a derivatives clearing organization under the Commodity Exchange Act, whose principal business is clearing commodity futures and options on commodity futures transactions and swaps and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.”.

(c) Execution of Security-Based Swaps.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 5 the following:

“SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

“(a) Execution Transparency.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national
securities exchange or on or through an swap execution
facility registered under section 5h, that makes the secu-

“(b) Exceptions.—The requirement of subsection
(a) shall not apply to a security-based swap if no national
securities exchange or swap execution facility makes the
security-based swap available for trading.

“(c) Required Reporting.—If the exception of
subsection (b) applies, and there is no national securities
exchange or security-based swap execution facility that
makes the security-based security-based swap available to
trade, the counterparties shall comply with any record-
keeping and transaction reporting requirements as may be
prescribed by the Commission with respect to security-
based security-based swaps subject to the requirements of
subsection (a).”.

(d) Security-based Swap Execution Facili-
78a et seq.) is amended by inserting after section 3B (as
added by subsection (a) of this section) the following:

“SEC. 3C. SWAP EXECUTION FACILITIES.

“(a) Registration.—

“(1) In General.—No person may operate a
facility for the trading or processing of security-
based swaps, unless the facility is registered as a
swap execution facility or as a national securities ex-
change under this section.

“(2) Dual Registration.—Any person that is
registered as a swap execution facility under this
section shall register with the Commission regardless
of whether the person also is registered with the
Commodity Futures Trading Commission as a swap
execution facility.

“(b) Trading and Trade Processing.—A swap
execution facility that is registered under subsection (a)
may—

“(1) make available for trading any security-
based swap; and

“(2) facilitate trade processing of any security-
based swap.

“(c) Trading by Contract Markets.—A board of
trade that operates a contract market shall, to the extent
that the board of trade also operates a swap execution fa-
cility and uses the same electronic trade execution system
for trading on the national securities exchange and the
swap execution facility, identify whether the electronic
trading is taking place on the national securities exchange
or the swap execution facility.

“(d) Core Principles for Swap Execution Fa-
cilities.—
“(1) Compliance with core principles.—

“(A) In general.—To be registered, and maintain registration, as a swap execution facility, the swap execution facility shall comply with—

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

“(ii) any requirement that the Commission may impose by rule or regulation.

“(B) Reasonable discretion of swap execution facility.—Unless otherwise determined by the Commission by rule or regulation, a swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap execution facility complies with the core principles described in this subsection.

“(2) Compliance with rules.—A swap execution facility shall—

“(A) monitor and enforce compliance with any rule of the swap execution facility, including—

“(i) the terms and conditions of the security-based swaps traded or processed
on or through the swap execution facility; and

“(ii) any limitation on access to the swap execution facility;

“(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

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

“(ii) to capture information that may be used in establishing whether rule violations have occurred;

“(C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades; and

“(D) provide by its rules that when a security-based swap dealer or major security-based swap participant enters into or facilitates a security-based swap that is subject to the mandatory clearing requirement of section 3B(a)(2)(F), the security-based swap dealer or
major security-based swap participant shall be responsible for compliance with the execution transparency requirement of section 5A(a).

“(3) Security-based swaps not readily susceptible to manipulation.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

“(4) Monitoring of trading and trade processing.—The swap execution facility shall—

“(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

“(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the swap execution facility; and

“(ii) procedures for trade processing of security-based swaps on or through the facilities of the swap execution facility; and

“(B) monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, in-
cluding methods for conducting real-time moni-
toring of trading and comprehensive and accu-
rate trade reconstructions.

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

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

“(B) provide the information to the Com-
mission on request; and

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

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) IN GENERAL.—To reduce the poten-
tial threat of market manipulation or congest-
tion, especially during trading in the delivery
month, a [swap execution facility] that is a
trading facility shall adopt for each of the con-
tracts of the facility, as is necessary and appro-
priate, position limitations or position account-
ability for speculators.

“(B) POSITION LIMITS.—For any contract
that is subject to a position limitation estab-
lished by the Commission pursuant to section 4a(a), the security-based swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

“(C) Position Enforcement.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), a swap execution facility shall reject any proposed security-based swap transaction if, based on information readily available to a swap execution facility, any proposed security-based swap transaction would cause a swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.

“(7) Financial Integrity of Transactions.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of the security-based swaps pursuant to section 2(h)(1).

“(8) Emergency Authority.—The swap execution facility shall adopt rules to provide for the ex-
exercise of emergency authority, in consultation or co-
operation with the Commission, as is necessary and
appropriate, including the authority to liquidate or
transfer open positions in any security-based swap
or to suspend or curtail trading in a security-based
swap.

“(9) TIMELY PUBLICATION OF TRADING INFOR-
MATION.—

“(A) IN GENERAL.—The swap execution
facility shall make public timely information on
price, trading volume, and other trading data
on security-based swaps to the extent prescribed
by the Commission.

“(B) CAPACITY OF SWAP EXECUTION FA-
cILITY.—The swap execution facility shall be
required to have the capacity to electronically
capture trade information with respect to trans-
actions executed on the facility.

“(10) RECORDKEEPING AND REPORTING.—

“(A) IN GENERAL.—A swap execution fa-
cility shall—

“(i) maintain records of all activities
relating to the business of the facility, in-
cluding a complete audit trail, in a form
and manner acceptable to the Commission for a period of 5 years; and

“(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this title.

“(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and swap data repositories.

“(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the swap execution facility shall avoid—

“(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

“(B) imposing any material anticompetitive burden on trading or clearing.

“(12) CONFLICTS OF INTEREST.—The swap execution facility shall—
“(A) establish and enforce rules to minimize conflicts of interest in its decisionmaking process; and

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

“(13) Financial resources.—

“(A) In general.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the swap execution facility.

“(B) Determination of resource adequacy.—The financial resources of a swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the swap execution facility to cover the operating costs of the swap execution facility for a 1-year period, as calculated on a rolling basis.

“(14) System safeguards.—The swap execution facility shall—

“(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the
development of appropriate controls and procedures, and automated systems, that—

“(i) are reliable and secure; and

“(ii) have adequate scalable capacity;

“(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for—

“(i) the timely recovery and resumption of operations; and

“(ii) the fulfillment of the responsibilities and obligation of the swap execution facility; and

“(C) periodically conduct tests to verify that the backup resources of the swap execution facility are sufficient to ensure continued—

“(i) order processing and trade matching;

“(ii) price reporting;

“(iii) market surveillance and

“(iv) maintenance of a comprehensive and accurate audit trail.

“(15) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—
“(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—

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

“(ii) review compliance with the core principles in this subsection;

“(iii) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

“(iv) be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

“(v) ensure compliance with this title and the rules and regulations issued under this title, including rules prescribed by the Commission pursuant to this section; and

“(vi) establish procedures for the remediation of noncompliance issues found during compliance office reviews, look
backs, internal or external audit findings, self-reported errors, or through validated complaints.

“(C) Requirements for procedures.—

In establishing procedures under subparagraph (B)(vi), the chief compliance officer shall design the procedures to establish the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(D) Annual reports.—

“(i) In general.—In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of—

“(I) the compliance of the swap execution facility with this title; and

“(II) the policies and procedures, including the code of ethics and conflict of interest policies, of the security-based swap execution facility.

“(ii) Requirements.—The chief compliance officer shall —

“(I) submit each report described in clause (i) with the appropriate fi-
nancial report of the swap execution facility that is required to be submitted to the Commission pursuant to this section; and

“(II) include in the report a certification that, under penalty of law, the report is accurate and complete.

“(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission.

“(f) RULES.—The Commission shall prescribe rules governing the regulation of swap execution facilities under this section.”.

(c) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 3C (as added by subsection (b)) the following:

“SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for any person to accept any money, securities, or
property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a security-based swaps customer or to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the customer as the result of such a security-based swap), unless the person shall have registered under this title with the Commission as a broker, dealer, or security-based swap dealer, and the registration shall not have expired nor been suspended nor revoked.

“(b) Cleared Security-based Swaps.—

“(1) Segregation Required.—A broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swaps customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the security-based swaps customer as the result of such a security-based swap) as belonging to the security-based swaps customer.

“(2) Commingling Prohibited.—Money, securities, and property of a security-based swaps customer described in paragraph (1) shall be separately accounted for and shall not be commingled with the
funds of the broker, dealer, or security-based swap
dealer or be used to margin, secure, or guarantee
any trades or contracts of any security-based swaps
customer or person other than the person for whom
the same are held.

“(c) Exceptions.—

“(1) Use of Funds.—

“(A) In General.—Notwithstanding sub-
section (b), money, securities, and property of a
security-based swaps customer of a broker, dealer, or security-based swap dealer described
in subsection (b) may, for convenience, be com-
mingled and deposited in the same 1 or more
accounts with any bank or trust company or
with a clearing agency.

“(B) Withdrawal.—Notwithstanding
subsection (b), such share of the money, securi-
ties, and property described in clause (i) as in
the normal course of business shall be necessary
to margin, guarantee, secure, transfer, adjust,
or settle a cleared security-based swap with a
clearing agency, or with any member of the
clearing agency, may be withdrawn and applied
to such purposes, including the payment of
commissions, brokerage, interest, taxes, storage,
and other charges, lawfully accruing in connection with the cleared security-based swap.

“(2) COMMISSION ACTION.—Notwithstanding subsection (b), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the security-based swaps customer of a broker, dealer, or security-based swap dealer described in subsection (b) may be commingled and deposited as provided in this section with any other money, securities, or property received by the broker, dealer, or security-based swap dealer and required by the Commission to be separately accounted for and treated and dealt with as belonging to the security-based swaps customer of the broker, dealer, or security-based swap dealer.

“(d) PERMITTED INVESTMENTS.—Money described in subsection (b) may be invested in obligations of the United States, in general obligations of any State or of any political subdivision of a State, and in obligations fully guaranteed as to principal and interest by the United States, or in any other investment that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regula-
tions and subject to such conditions as the Commission
may prescribe.

"(e) PROHIBITION.—It shall be unlawful for any per-
son, including any clearing agency and any depository,
that has received any money, securities, or property for
deposit in a separate account or accounts as provided in
subsection (b) to hold, dispose of, or use any such money,
securities, or property as belonging to the depositing
broker, dealer, or security-based swap dealer or any person
other than the swaps customer of the broker, dealer, or
security-based swap dealer.”.

(f) TRADING IN SECURITY-BASED SWAPS.—Section 6
is amended by adding at the end the following:

"(l) SECURITY-BASED SWAPS.—It shall be unlawful
for any person to effect a transaction in a security-based
swap with or for a person that is not an eligible contract
participant, unless such transaction is effected on a na-
tional securities exchange registered pursuant to sub-
section (b).”.

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
TAIN ENFORCEMENT PROVISIONS.—Section 9(b) of the
Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is
amended by striking paragraphs (1) through (3) and in-
serting the following:
“(1) any transaction in connection with any security whereby any party to such transaction acquires—

“(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

“(B) any security futures product on the security; or

“(C) any security-based swap involving the security or the issuer of the security; or

“(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;

“(B) such security futures product; or

“(C) such security-based swap; or

“(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any—

“(A) such put, call, straddle, option, or privilege;
“(B) such security futures product with relation to such security; or

“(C) any security-based swap involving such security or the issuer of such security.”.

(h) Rulemaking Authority to Prevent Fraud, Manipulation and Deceptive Conduct in Security-based Swaps.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

“(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.
(i) Position Limits and Position Accountability for Security-Based Swaps.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

"Sec. 10B. Position Limits and Position Accountability for Security-Based Swaps and Large Trader Reporting.

"(a) Position Limits.—As a means reasonably designed to prevent fraud and manipulation, the Commission shall, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

"(1) any security-based swap and any security or loan or group or narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans; or"
“(2) any security-based swap and (A) any security or group or narrow-based security index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

“(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

“(c) SRO RULES.—

“(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—
“(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

“(i) any member of such self-regulatory organization; or

“(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

“(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (c)(1)(A).

“(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

“(A) any security-based swap and any security or loan or group or narrow-based security narrow-based security index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security
or loan or group or narrow-based security index of securities or loans; or

“(B)(i) any security-based swap; and
“(ii) any security-based swap and any other instrument relating to the same security or group or narrow-based security index of securities.

“(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person’s own account or the account of others in any securities-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap and any security or loan or group or narrow-based security index of securities or loans and any other instrument relating to such security or loan or group or narrow-based security index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.”.

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Ex-
change Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(m) **Public Availability of Security-Based Swap Transaction Data.**—

“(1) **In general.**—

“(A) **Definition of real-time public reporting.**—In this paragraph, the term ‘real-time public reporting’ means to report data relating to a security-based swap transaction as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

“(B) **Purpose.**—The purpose of this section is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

“(C) **General rule.**—The Commission is authorized to provide by rule for the public availability of security-based swap transaction and pricing data as follows:

“(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in
section 3B(a)(2) (including those security-based swaps that are exempted from the requirement pursuant to section 3B(a)(4)), the Commission shall require real-time public reporting for such transactions.

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

“(iii) With respect to security-based swaps that are not cleared at a registered derivatives clearing organization and which are reported to a security-based swap data repository or the Commission under section 3B(a), the Commission shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on such security-based swap trading volumes and positions.
(D) Registered entities and public reporting.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

(E) Rulemaking required.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

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

(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and
“(iv) that take into account whether the public disclosure will materially reduce market liquidity.

“(F) **Timeliness of reporting.**—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

“(2) **Semiannual and annual public reporting of aggregate security-based swap data.**—

“(A) **In general.**—In accordance with subparagraph (B), the Commission shall issue a written report on a semiannual and annual basis to make available to the public information relating to—

“(i) the trading and clearing in the major security-based swap categories; and

“(ii) the market participants and developments in new products.

“(B) **Use; consultation.**—In preparing a report under subparagraph (A), the Commission shall—
“(i) use information from security-based swap data repositories and derivatives clearing organizations; and

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

“(n) SWAP DATA REPOSITORIES.—

“(1) Registration requirement.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.

“(2) Inspection and examination.—Each registered swap data repository shall be subject to inspection and examination by any representative of the Commission.

“(3) Compliance with core principles.—

“(A) In general.—To be registered, and maintain registration, as a security-based swap data repository, the swap data repository shall comply with—

“(i) the core principles described in this subsection; and
“(ii) any requirement that the Commission may impose by rule or regulation.

“(B) Reasonable discretion of swap data repository.—Unless otherwise determined by the Commission by rule or regulation, a swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this subsection.

“(4) Standard setting.—

“(A) Data identification.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered swap data repository.

“(B) Data collection and maintenance.—The Commission shall prescribe data collection and data maintenance standards for swap data repositories.

“(C) Comparability.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing
agencies in connection with their clearing of security-based swaps.

“(5) DUTIES.—A swap data repository shall—

“(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

“(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

“(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

“(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

“(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 2(a)(13);

“(E) at the direction of the Commission, establish automated systems for monitoring,
screening, and analyzing security-based swap data;

“(F) maintain the privacy of any and all security-based swap transaction information that the swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

“(G) on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available all data obtained by the swap data repository, including individual counterparty trade and position data, to the Commodity Futures Trading Commission to—

“(i) each appropriate prudential regulator;

“(ii) the Financial Services Oversight Council;

“(iii) the Department of Justice; and

“(iv) any other person that the Commission determines to be appropriate, including—

“(I) foreign financial supervisors (including foreign futures authorities); and

“(II) foreign central banks; and
“(III) foreign ministries.

“(H) CONFIDENTIALITY AND INDEMNIFICATION AGREEMENT.—Before the swap data repository may share information with any entity described in subparagraph (G)—

“(i) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided; and

“(ii) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under section 24.

“(6) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

“(A) IN GENERAL.—Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

“(B) DUTIES.—The chief compliance officer shall—
“(i) report directly to the board or to the senior officer of the swap data repository;

“(ii) review the compliance of the swap data repository with respect to the core principles described in subsection (e);

“(iii) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise;

“(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

“(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

“(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(I) compliance office review;
“(II) look-back;

“(III) internal or external audit finding;

“(IV) self-reported error; or

“(V) validated complaint; and

“(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

“(C) ANNUAL REPORTS.—

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

“(I) the compliance of the swap data repository of the chief compliance officer with respect to this title (including regulations); and

“(II) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository).
“(ii) REQUIREMENTS.—A compliance report under clause (i) shall—

“(I) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and

“(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(7) CORE PRINCIPLES APPLICABLE TO SECURITY-BASED SWAP DATA REPOSITORIES.—

“(A) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a swap data repository may not—

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

“(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

“(B) GOVERNANCE ARRANGEMENTS.—

Each security-based swap data repository shall
establish governance arrangements that are transparent—

“(i) to fulfill public interest requirements; and

“(ii) to support the objectives of the Federal Government, owners, and participants.

“(C) CONFLICTS OF INTEREST.—Each security-based swap data repository shall—

“(i) establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the swap data repository; and

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

“(8) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP DATA REPOSITORIES.—Any person that is required to be registered as a swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act as a swap data repository.

“(9) RULES.—The Commission shall adopt rules governing persons that are registered under this subsection.”.
SEC. 204. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.


"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

“(a) Registration.—

“(1) Security-based swap dealers.—It shall be unlawful for any person to act as a security-based swap dealer unless the person is registered as a security-based swap dealer with the Commission.

“(2) Major security-based swap participants.—It shall be unlawful for any person to act as a major security-based swap participant unless the person is registered as a major security-based swap participant with the Commission.

“(b) Requirements.—

“(1) In general.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

“(2) Contents.—
“(A) IN GENERAL.—The application shall be made in such form and manner as prescribed by the Commission, and shall contain such information, as the Commission considers necessary concerning the business in which the applicant is or will be engaged.

“(B) CONTINUAL REPORTING.—A person that is registered as a security-based swap dealer or major security-based swap participant shall continue to submit to the Commission reports that contain such information pertaining to the business of the person as the Commission may require.

“(3) EXPIRATION.—Each registration under this section shall expire at such time as the Commission may prescribe by rule or regulation.

“(4) RULES.—Except as provided in subsections (c), (e), and (f), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants.

“(5) TRANSITION.—Rules under this section shall provide for the registration of security-based
swap dealers and major security-based swap participants, not later than 1 year after the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

“(6) **Statutory disqualification.**—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the security-based swap dealer or major security-based swap participant, if the security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

“(c) **Dual Registration.**—

“(1) **Swap dealer.**—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a swap dealer.
“(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission, regardless of whether the person also is registered with the Commodity Futures Trading Commission as a major swap participant.

“(d) RULEMAKING.—

“(1) IN GENERAL.—The Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this section.

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—

“(A) IN GENERAL.—The Commission may not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based swap participants for which there is a prudential regulator.

“(B) APPLICABILITY.—Subparagraph (A) does not limit the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—
“(1) General Requirements.—

“(A) Bank security-based swap dealers and major security-based swap participants.—Each registered security-based swap dealer and major security-based swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, as the prudential regulators shall jointly prescribe by rule or regulation that—

“(i) help ensure the safety and soundness of the security-based swap dealer and the major security-based swap participant; and

“(ii) are appropriate for the risk associated with the uncleared security-based swaps held as a security-based swap dealer or major security-based swap participant and the prudential regulators shall require significantly higher capital for security-based swaps that are uncleared versus similar security-based swaps that are cleared through a derivatives clearing organization.
“(B) Nonbank security-based swap dealers and major security-based swap participants.—Each registered security-based swap dealer and major security-based swap participant for which there is not a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements, including the use of noncash collateral, as the Commission shall prescribe by rule or regulation that—

“(i) help ensure the safety and soundness of the security-based swap dealer and the major security-based swap participant; and

“(ii) are appropriate for the risk associated with the uncleared security-based swaps held as a security-based swap dealer or major security-based swap participant and the regulators shall require significantly higher capital for security-based swaps that are uncleared versus similar security-based swaps that are cleared through a derivatives clearing organization.

“(C) Applicability with respect to counterparties.—Subparagraphs (A) and
(B) shall not apply to initial and variation margin for security-based swaps in which 1 of the counterparties is not—

“(i) a security-based swap dealer;
“(ii) a major security-based swap participant; or
“(iii) a financial entity as described in section 3B(a)(3)(A)(ii), and such counterparty is eligible for and utilizing the commercial end user clearing exemption under [section 2(h)(3)].

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

“(A) IN GENERAL.—The prudential regulators, the Commission, and the Securities and Exchange Commission shall periodically (but not less frequently than annually) consult on minimum capital requirements and minimum initial and variation margin requirements.

“(B) COMPARABILITY.—The entities described in subparagraph (A) shall, to the maximum extent practicable, establish and maintain comparable minimum capital requirements and minimum initial and variation margin requirements for—
“(i) security-based swap dealers; and

“(ii) major security-based swap participants.

“(3) Rulemaking.—

“(A) Bank security-based swap dealers and major security-based swap participants.—The Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is a prudential regulator.

“(B) Nonbank security-based swap dealers and major security-based swap participants.—The Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no prudential regulator.

“(f) Reporting and Recordkeeping.—

“(1) In general.—Each registered security-based swap dealer and major security-based swap participant—

“(A) shall make such reports as are required by the Commission by rule or regulation
regarding the transactions and positions and financial condition of the registered security-based swap dealer or major security-based swap participant;

“(B)(i) for which there is a prudential regulator, shall keep books and records of all activities related to the business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(ii) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

“(2) RULES.—The Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—
“(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of the security-based swaps of the registered security-based swap dealer and major security-based swap participant and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.

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

“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records for each customer or counterparty in a manner and form that is identifiable with each security-based swap transaction.

“(4) AUDIT TRAIL.—Each registered security-based swap dealer and major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.
“(5) Rules.—The Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

“(h) Business Conduct Standards.—

“(1) In general.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as may be prescribed by the Commission by rule or regulation that relate to—

“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

“(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;

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

“(D) such other matters as the Commission determines to be appropriate.

“(2) Special rule; fiduciary duties to certain entities.—

“(A) Governmental entities.—A security-based swap dealer that provides advice re-
garding, or offers to enter into, or enters into a security-based swap with a State, State agency, city, county, municipality, or other political subdivision or a Federal agency shall have a fiduciary duty to the State, State agency, city, county, municipality, or other political subdivision, or the Federal agency as appropriate.

“(B) PENSION PLANS; ENDOWMENTS; RETIREMENT PLANS.—A security-based swap dealer that provides advice regarding, or offers to enter into, or enters into a security-based swap with a pension plan, endowment, or retirement plan shall have a fiduciary duty to the pension plan, endowment, or retirement plan, as appropriate.

“(3) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

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

“(B) require disclosure by the security-based swap dealer or major security-based swap
participant to any counterparty to the trans-
action (other than a security-based swap dealer
or a major security-based swap participant)
of—

“(i) information about the material
risks and characteristics of the security-
based swap;

“(ii) the source and amount of any
fees or other material remuneration that
the security-based swap dealer or major se-
curity-based swap participant would di-
rectly or indirectly expect to receive in con-
nection with the security-based swap;

“(iii) any other material incentives or
conflicts of interest that the security-based
swap dealer or major security-based swap
participant may have in connection with
the security-based swap; and

“(iv)(I) for cleared security-based
swaps, upon the request of the
counterparty, the daily mark from the ap-
propriate derivatives clearing organization;
and

“(II) for uncleared security-based
swaps, upon request of the counterparty,
the daily mark of the security-based swap
dealer or the major security-based swap
participant; and

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

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

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

“(1) IN GENERAL.—Each registered security-
based swap dealer and major security-based swap
participant shall conform with such standards as
may be prescribed by the Commission by rule or reg-
ulation that relate to timely and accurate confirma-
tion, processing, netting, documentation, and valu-
atation of all security-based swaps.

“(2) RULES.—The Commission shall adopt
rules governing documentation and back office
standards for security-based swap dealers and major
security-based swap participants.
“(j) Duties.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

“(1) Monitoring of Trading.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

“(2) Risk Management Procedures.—The security-based swap dealer or major security-based swap participant shall establish robust and professional risk management systems adequate for managing the day-to-day business of the security-based swap dealer or major security-based swap participant.

“(3) Disclosure of General Information.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, information concerning—

“(A) terms and conditions of its security-based swaps;
“(B) security-based swap trading operations, mechanisms, and practices;

“(C) financial integrity protections relating to security-based swaps; and

“(D) other information relevant to its trading in security-based swaps.

“(4) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major security-based swap participant shall—

“(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

“(B) provide the information to the Commission and to the prudential regulator for the security-based swap dealer or major security-based swap participant, as applicable, on request.

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

“(A) establish structural and institutional safeguards to ensure that the activities of any person within the firm relating to research or
analysis of the price or market for any commodity or security-based swap or acting in a role of providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of persons whose involvement in pricing, trading, or clearing activities might potentially bias their judgment or supervision and contravene the core principles of open access and the business conduct standards described in this title; and

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

“(6) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, the security-based swap dealer or major security-based swap participant shall not—

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

“(B) impose any material anticompetitive burden on trading or clearing.
“(k) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

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

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

“(A) report directly to the board or to the senior officer of the security-based swap dealer or major security-based swap participant;

“(B) review the compliance of the security-based swap dealer or major security-based swap participant with respect to the security-based swap dealer and major security-based swap participant requirements described in this section;

“(C) in consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the organization, resolve any conflicts of interest that may arise;

“(D) be responsible for administering each policy and procedure that is required to be established pursuant to this section;
“(E) ensure compliance with this title (including regulations) relating to security-based swaps, including each rule prescribed by the Commission under this section;

“(F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

“(i) compliance office review;

“(ii) look-back;

“(iii) internal or external audit finding;

“(iv) self-reported error; or

“(v) validated complaint; and

“(G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of non-compliance issues.

“(3) ANNUAL REPORTS.—

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

“(i) the compliance of the security-based swap dealer or major swap partici-
pant with respect to this title (including regulations); and

“(ii) each policy and procedure of the security-based swap dealer or major security-based swap participant of the chief compliance officer (including the code of ethics and conflict of interest policies).

“(B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—

“(i) accompany each appropriate financial report of the security-based swap dealer or major security-based swap participant that is required to be furnished to the Commission pursuant to this section; and

“(ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

“(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect
or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

“(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

“(1) PRIMARY ENFORCEMENT AUTHORITY.—

“(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by title II of the Wall Street Transparency and Accountability Act of 2010, with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The prudential regulator shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this title, with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

“(C) REFERRAL.—
“(i) Violations of nonprudential requirements.—If the prudential regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the non-prudential requirements of section 15F or rules adopted by the Commission thereunder, that prudential regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(ii) Violations of prudential requirements.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a prudential regulator may have engaged in conduct that constitute a violation of the prudential requirements of section 15F(e) or rules
adopted thereunder, the Commission may recommend in writing to the prudential regulator that the prudential regulator initiate an enforcement proceeding as authorized under this title. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(2) Censure, denial, suspension; notice and hearing.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based
swap participant, whether prior or subsequent to becoming so associated—

“(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

“(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

“(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

“(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

“(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to be—
come associated with a security-based swap dealer or
major security-based swap participant for the pur-
pose of effecting or being involved in effecting secu-
rity-based swaps on behalf of such security-based
swap dealer or major security-based swap partici-
pant, the Commission, by order, shall censure, place
limitations on the activities or functions of such per-
son, or suspend for a period not exceeding 12
months, or bar such person from being associated
with a security-based swap dealer or major security-
based swap participant, if the Commission finds, on
the record after notice and opportunity for a hear-
ing, that such censure, placing of limitations, sus-
pension, or bar is in the public interest and that
such person—

“(A) has committed or omitted any act, or
is subject to an order or finding, enumerated in
subparagraph (A), (D), or (E) of paragraph (4)
of section 15(b);”

“(B) has been convicted of any offense
specified in subparagraph (B) of such para-
graph (4) within 10 years of the commencement
of the proceedings under this subsection;
“(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); “(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or “(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4). “(4) UNLAWFUL CONDUCT.—It shall be unlawful— “(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or “(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in con-
travention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”.

SEC. 205. RULEMAKING ON CONFLICT OF INTEREST.

(a) In General.—The Securities and Exchange Commission shall determine whether to adopt rules to establish limits on the control of any clearing agency that clears security-based swaps, or swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in Section 102 of the Financial Stability Act of 2010) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) Purposes.—The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote
competition, or mitigate conflicts of interest in connection
with a security-based swap dealer or major security-based
swap participant’s conduct of business with, a clearing
agency, exchange, or swap execution facility that clears,
posts, or makes available for trading security-based swaps
and in which such security-based swap dealer or major se-
curity-based swap participant has a material debt or eq-
uit investment.

SEC. 206. REPORTING AND RECORDKEEPING.

(a) In General.—The Securities Exchange Act of
1934 (15 U.S.C. 78a et seq.) is amended by inserting after
section 13 the following section:

"SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-
TAIN SECURITY-BASED SWAPS."

"(a) Required Reporting of Security-Based
Swaps Not Accepted by Any Clearing Agency or
Derivatives Clearing Organization.—

"(1) In General.—Each security-based swap
that is not accepted for clearing by any clearing
agency or derivatives clearing organization shall be
reported to—

"(A) a swap data repository described in
section 10B(n); or

"(B) in the case in which there is no swap
data repository that would accept the security-
based swap, to the Commission pursuant to this section within such time period as the Commission may by rule or regulation prescribe.

“(2) Transition rule for preenactment security-based swaps.—

“(A) Security-based swaps entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010.—Each security-based swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered security-based swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final rule; or

“(ii) such other period as the Commission determines to be appropriate.

“(B) Commission rulemaking.—The Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each security-based swap entered into before the date
of enactment as referenced in subparagraph (A).

“(C) EFFECTIVE DATE.—The reporting provisions described in this section shall be effective upon the enactment of this section.

“(3) REPORTING OBLIGATIONS.—

“(A) SECURITY-BASED SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which only 1 counterparty is a security-based swap dealer or major security-based swap participant, the security-based swap dealer or major security-based swap participant shall report the security-based swap as required under paragraphs (1) and (2).

“(B) SECURITY-BASED SWAPS IN WHICH 1 COUNTERPARTY IS A SECURITY-BASED SWAP DEALER AND THE OTHER A MAJOR SECURITY-BASED SWAP PARTICIPANT.—With respect to a security-based swap in which 1 counterparty is a security-based swap dealer and the other a major security-based swap participant, the security-based swap dealer shall report the security-
based swap as required under paragraphs (1) and (2).

“(C) OTHER SECURITY-BASED SWAPS.—

With respect to any other security-based swap not described in subparagraph (A) or (B), the counterparties to the security-based swap shall select a counterparty to report the security-based swap as required under paragraphs (1) and (2).

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

“(1) clear the security-based swap in accordance with section 3B(a)(1); or

“(2) have the data regarding the security-based swap accepted by a security-based swap data repository in accordance with rules (including timeframes) adopted by the Commission under this title.

“(c) REQUIREMENTS.—An individual or entity described in subsection (b) shall—

“(1) upon written request from the Commission, provide reports regarding the security-based swaps held by the individual or entity to the Com-
mission in such form and in such manner as the
Commission may request; and

“(2) maintain books and records pertaining to
the security-based swaps held by the individual or
entity in such form, in such manner, and for such
period as the Commission may require, which shall
be open to inspection by—

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

“(B) an appropriate prudential regulator;

“(C) the Commodity Futures Trading
Commission;

“(D) the Financial Services Oversight
Council; and

“(E) the Department of Justice.

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

(b) BENEFICIAL OWNERSHIP REPORTING.—Section
78m) is amended—
(1) in subsection (d)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) in subsection (g)(1), by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule” after “subsection (d)(1) of this section”.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule,” after “subsection (d)(1) of this section”.

(1) in subparagraph (C), by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and
(2) in subparagraph (F), by adding “, or security-based swap dealer, or a major security-based swap participant” after “or dealer”.

(e) Security-based Swap Beneficial Ownership.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(o) Beneficial Ownership.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.”.
Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) LIMITATION ON JUDGMENTS.—

“(1) IN GENERAL.—No person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations under this title.

“(2) RULE OF CONSTRUCTION.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity.

“(3) STATE BUCKET SHOP LAWS.—No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the op-
eration of ‘bucket shops’ or other similar or related activities, shall invalidate—

“(A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

“(B) any security-based swap between eligible contract participants; or

“(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

“(4) OTHER STATE PROVISIONS.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.”.
TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

(2) in paragraph (3) by adding at the end the following: “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.”; and

(3) by adding at the end the following:

“(17) The terms ‘swap’ and ‘security-based swap’ have the same meanings as in section 1a of the Commodity Exchange.

“(18) The terms ‘purchase’ or ‘sale’ of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.”.
(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(15) Any security-based swap that is not otherwise a security, and that satisfies such conditions as are established by rule or regulation by the Commission, consistent with the provisions of the Wall Street Transparency and Accountability Act of 2010.”.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

“(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).”.
SEC. 209. DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940.

Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–1) is amended—


SEC. 210. DEFINITIONS UNDER THE INVESTMENT ADVISORS ACT OF 1940.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) is amended—


SEC. 211. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Fu-
tures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

SEC. 212. JURISDICTION.

(a) IN GENERAL.—Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

“(c) DERIVATIVES.—The Commission shall not grant exemptions from the security-based swap provisions of the Wall Street Transparency and Accountability Act of 2010 or the amendments made by that Act, except as expressly authorized under the provisions of that Act.”.

(b) RULE OF CONSTRUCTION.—Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:

“(c) RULE OF CONSTRUCTION.—No provision of this title that was added by the Wall Street Transparency and Accountability Act of 2010, or any rule or regulation thereunder, shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States, unless such person transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this title that was added by the Wall Street Transparency
and Accountability Act of 2010. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this title, as in effect prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.”.

SEC. 213. EFFECTIVE DATE.

(a) IN GENERAL.—Unless otherwise specifically provided in this title, the provisions of this title shall become effective on the later of 180 days after the date of enactment of this Act or, to the extent that a provision of this title requires rulemaking, not later than 60 days after publication of a final rule or regulation implementing such provision of this title.

(b) RULE OF CONSTRUCTION.—Subsection (a) does not preclude the Securities and Exchange Commission from any rulemaking required to implement the provisions of this title.