TITLE VII—IMPROVEMENTS TO REGULATION OF
OVER-THE-COUNTER DERIVATIVES MARKETS

SEC. 701. SHORT TITLE.
This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

Subtitle A—Regulation of Swap Markets

SEC. 711. DEFINITIONS.

(a) Amendments to Definitions in the Commodity Exchange Act.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

“(9) DERIVATIVE.—The term ‘derivative’ means—

“(A) a contract of sale of a commodity for future delivery; or

“(B) a swap.”;

(3) by redesignating paragraph (35) (as redesignated by subsection (a)) as paragraph (36);

(4) by adding after paragraph (34) (as redesignated by subsection (a)) the following:

“(35) SWAP.—

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

“(i) is a put, call, cap, floor, collar, or similar option of any kind for
the purchase or sale of, or based on the value of, one 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) provides for any purchase, sale, payment, or delivery (other
than a dividend on an equity security) that is dependent on the occurrence,
non-occurrence, or the extent of the occurrence of an event or contingency
associated with a potential financial, economic, or commercial
consequence;

“(iii) provides on an executory basis for the exchange, on a fixed
or contingent basis, of one or more payments based on the value or level
of one or more interest or other rates, currencies, commodities, securities,
instruments of indebtedness, indices, quantitative measures, or other
financial or economic interests or property of any kind, or any interest
therein or based on the value thereof, and that transfers, as between the
parties to the transaction, in whole or in part, the financial risk associated
with a future change in any such value or level without also conveying a
current or future direct or indirect ownership interest in an asset (including
any enterprise or investment pool) or liability that incorporates the
financial risk so transferred, including any agreement, contract, or
transaction commonly known as an interest rate swap, a rate floor, rate
cap, rate collar, cross-currency rate swap, basis swap, currency swap, total
return swap, equity index swap, equity swap, debt index swap, debt swap,
credit spread, credit default swap, credit swap, weather swap, energy
swap, metal swap, agricultural swap, emissions swap, or commodity swap;

“(iv) is an agreement, contract, or transaction that is, or in the
future becomes, commonly known to the trade as a swap; or

“(v) is any combination or permutation of, or option on, any
agreement, contract, or transaction described in any of clauses (i) through
(iv);

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

“(i) any contract of sale of a commodity for future delivery or
security futures product traded on or subject to the rules of any board of
trade designated as a contract market under section 5 or 5f;

“(ii) any sale of a nonfinancial commodity for deferred shipment or
delivery, so long as such transaction is physically settled;

“(iii) any put, call, straddle, option, or privilege on any security,
certificate of deposit, or group or index of securities, including any interest
therein or based on the value thereof, that is subject to the Securities Act
(15 U.S.C. 78a et seq.);

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

“(v) any agreement, contract, or transaction providing for the
purchase or sale of one or more securities on a fixed basis that is subject to
the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities
Exchange Act of 1934 (15 U.S.C. 78a et seq);

“(vi) any agreement, contract, or transaction providing for the
purchase or sale of one or more securities on a contingent basis that is
subject to the Securities Act of 1933 (15 U.S.C. 77a et seq) and the
agreement, contract, or transaction predicates such 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)(1) of the Securities Act of 1933 (15 U.S.C.
77b(a)(1)); or

“(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)(11) of the Securities Act of 1933) (15
U.S.C. 77b(a)(11)) by the issuer of such security for the purposes
of raising capital, unless such agreement, contract, or transaction is
entered into to manage a risk associated with capital raising;

“(ix) any foreign exchange swap;

“(x) any foreign exchange forward;

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

“(xii) any security-based swap, other than a security-based swap as
described in subparagraph 38(C).

“(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The
term ‘swap’ shall be construed to include a master agreement that provides for an
agreement, contract, or transaction that is a swap pursuant to subparagraph (A),
together with all supplements to any such master agreement, without regard to
whether the master agreement contains an agreement, contract, or transaction that
is not a swap pursuant to subparagraph (A), except that the master agreement shall
be considered to be a swap only with respect to each agreement, contract, or
transaction under the master agreement that is a swap pursuant to subparagraph
(A).”.

(5) in paragraph (13) (as redesignated by subsection (a))—

(A) in subparagraph (A)—

(i) in clause (vii), by striking “$25,000,000” and inserting

“$50,000,000”;

(ii) in clause (xi), by striking “total assets in an amount” and
inserting “amounts invested on a discretionary basis”; and

(B) in paragraph (C), by striking “determines” and inserting “and the

Securities and Exchange Commission may further jointly determine”.

(6) in paragraph (30) (as redesignated by subsection (a)), by—
(A) redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking “and”; and

(C) inserting after subparagraph (D) the following:

“(E) an alternative swap execution facility registered under section 5h;

“(F) a swap repository; and”; and

(7) by adding after paragraph (36) (as redesignated by subsection (c)) the following:

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

(8) by adding after paragraph (37) the following:

“(38) SECURITY-BASED SWAP.—

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

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

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

“(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial
statements, financial condition, or financial obligations of the
issuer.

“(B) EXCLUSION.—The term ‘security-based swap’ does not include any
agreement, contract, or transaction that meets the definition of security-based
swap only because it references or is based upon a government security.

“(C) MIXED SWAP.—The term ‘security-based swap’ includes any
agreement, contract, or transaction that is as described in subparagraph (A) and
also is based on the value of one or more interest or other rates, currencies,
commodities, instruments of indebtedness, indices, quantitative measures, other
financial or economic interest or property of any kind (other than a single security
or a narrow-based security index), or the occurrence, non-occurrence, or the
extent of the occurrence of an event or contingency associated with a potential
financial, economic, or commercial consequence (other than an event described in
subparagraph (A)(iii)).

“(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The
term ‘security-based swap’ shall be construed to include a master agreement that
provides for an agreement, contract, or transaction that is a security-based swap
pursuant to subparagraph (A), together with all supplements to any such master
agreement, without regard to whether the master agreement contains an
agreement, contract, or transaction that is not a security-based swap pursuant to
subparagraph (A), except that the master agreement shall be considered to be a
security-based swap only with respect to each agreement, contract, or transaction
under the master agreement that is a security-based swap pursuant to
(9) by adding after paragraph (38) the following:

“(39) Swap dealer.—

“(A) In general.—The term ‘swap dealer’ means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise.

“(B) Exception.—The term ‘swap dealer’ does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”.

(10) by adding after paragraph (39) the following:

“(40) Major swap participant.—The term ‘major swap participant’ means any person who is not a swap dealer and who maintains a substantial net position in outstanding swaps, other than to create and maintain an effective hedge under generally accepted accounting principles, as the Commission and the Securities and Exchange Commission may further jointly define by rule or regulation.”;

(11) by adding after paragraph (40) the following:

“(41) Major security-based swap participant.—The term ‘major security-based swap participant’ means any person who is not a security-based swap dealer and who maintains a substantial net position in outstanding security-based swaps, other than to create and maintain an effective hedge under generally accepted accounting principles, as the Commission and the Securities and Exchange Commission may further jointly define by rule or regulation.”.

(12) by adding after paragraph (41) the following:
“(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term ‘appropriate Federal banking agency’ has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).”.

(13) by adding after paragraph (42) the following:

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

“(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

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

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

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

“(i) a national bank; or

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

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.”.

(14) by adding after paragraph (43) the following:

“(44) SECURITY-BASED SWAP DEALER.—

“(A) IN GENERAL.—The term ‘security-based swap dealer’ means any person engaged in the business of buying and selling security-based swaps for
such person's own account, through a broker or otherwise.

“(B) EXCEPTION.—The term ‘security-based swap dealer’ does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.”.

(15) by adding after paragraph (44) the following:

“(45) GOVERNMENT SECURITY.—The term ‘government security’ has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).”.

(16) by adding after paragraph (45) the following:

“(46) FOREIGN EXCHANGE FORWARD.—The term ‘foreign exchange forward’ means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.”.

(17) by adding after paragraph (46) the following:

“(47) FOREIGN EXCHANGE SWAP.—The term ‘foreign exchange swap’ means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.”.

(18) by adding after paragraph (47) the following:

“(48) 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, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-10).

(19) by adding after paragraph (48) the following:

“(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term ‘person associated with a swap dealer or major swap participant’ or ‘associated person of a swap dealer or major swap participant’ means any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant, or any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6) of this Act.

(20) by adding after paragraph (49) the following:

“(50) SWAP REPOSITORY.—The term ‘swap repository’ means an entity that
collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.”.

(b) JOINT RULE-MAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule further defining the terms “swap,” “security-based swap,” “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant,” and “eligible contract participant” no later than 180 days after the effective date of this Act.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may prescribe rules defining the term “swap” or “security-based swap” to include transactions that have been structured to evade this Act.

(c) JOINT RULEMAKING UNDER THIS ACT.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this Act by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe uniform rules and regulations under any provision of this Act in a timely manner, the Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall prescribe rules and regulations under such provision. A rule prescribed by the Secretary of the Treasury shall be enforced as if prescribed jointly by the Commodity Futures Trading Commission and
the Securities and Exchange Commission and shall remain in effect until the Secretary rescinds the rule or until the effective date of a corresponding rule prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission in accordance with this section, whichever is later.

3) **DEADLINE.**—The Secretary of the Treasury shall adopt rules and regulations under paragraph (2) within 180 days of the time that the Commodity Futures Trading Commission and the Securities and Exchange Commission failed to adopt uniform rules and regulations.

4) **TREATMENT OF SIMILAR PRODUCTS.**—In adopting joint rules and regulations under this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall prescribe requirements to treat functionally or economically similar products similarly.

5) **TREATMENT OF DISSIMILAR PRODUCTS.**—Nothing in this Act shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

6) **JOINT INTERPRETATION.**—Any interpretation of, or guidance regarding, a provision of this Act, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this Act requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(d) **EXEMPTIONS.**—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: “The Commission shall not have the authority to
grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Market
Act of 2009, except as expressly authorized under the provisions of that Act.”.

SEC. 712. JURISDICTION.

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

(1) by striking “(C)” and “(D)” and inserting “(C), (D), and (G)”; and
(2) by striking “subsections (c) through (i)” and inserting “subsections (c) and

(f)”;
(3) by striking “involving contracts of sale” and inserting “involving swaps or
contracts of sale”.

(b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1))

is amended by inserting after subparagraph (F) the following—

“(G) Nothing contained in this subsection (a)(1) shall supersede or limit
the jurisdiction conferred on the Securities and Exchange Commission or other
regulatory authority by, or otherwise restrict the authority of the Securities and
Exchange Commission or other regulatory authority under, the Over-the-Counter
Derivatives Markets Act of 2009, including with respect to a security-based swap
as described in subparagraph 38(C) of section 1a of the Commodity Exchange
Act.”.

(c) ADDITIONS.—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”;
(2) by redesignating clause (ii) as clause (iii); and
(3) by inserting after clause (i) the following:

“(ii) a swap; or”.

SEC. 713. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), 2(g), and 2(h)) are repealed.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

“(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and (j), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

“(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) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

“(j) CLEARING REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (8), it shall be unlawful to enter into a swap that is standardized unless—

“(A) the swap is cleared by a derivatives clearing organization registered under this Act; and
“(B) the rules of the derivatives clearing organization described in
subparagraph (A) prescribe that all swaps with the same terms and conditions are
fungible and may be offset with each other.

“(2) STANDARDIZATION IF CLEARED.—A swap that is accepted for clearing by any
registered derivatives clearing organization shall be presumed to be standardized.

“(3) SWAPS DESIGNATED AS STANDARDIZED.—

“(A) Within 180 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt rules to further define the term
‘standardized.’ In adopting such rules, the Commission and the Securities and
Exchange Commission shall jointly define the term ‘standardized’ as broadly as
possible, after taking into account the following factors:

“(i) the extent to which any of the terms of the swap, including
price, are disseminated to third parties or are referenced in other
agreements, contracts, or transactions;

“(ii) the volume of transactions in the swap;

“(iii) the extent to which the terms of the swap are similar to the
terms of other agreements, contracts, or transactions that are centrally
cleared;

“(iv) whether any differences in the terms of the swap, compared
to other agreements, contracts, or transactions that are centrally cleared,
are of economic significance; and

“(v) any other factors the Commission and the Securities and
Exchange Commission determine to be appropriate.

“(B) The Commission may separately designate a particular swap or class of swaps as standardized, taking into account the factors enumerated in subparagraph (A)(i)-(v) and the joint rules adopted under paragraph (3)(A).

“(4) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this Act provided that any such rules or interpretations must be issued jointly to be effective.

“(5) REQUIRED REPORTING.—Both counterparties to a swap that is not accepted for clearing by any derivatives clearing organization shall report such a swap either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

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

“(A) swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; and

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

“(i) 90 days after the effective date of the Over-the-Counter
Derivatives Markets Act of 2009; or

“(ii) such other time after entering into the swap as the
Commission may prescribe by rule or regulation.”.

“(7) MANDATORY TRADING.—Except as provided in paragraph (8), a swap that is
standardized shall be traded on a board of trade designated as a contract market under
section 5 or on an alternative swap execution facility registered under section 5h.

“(8) EXCEPTIONS.—The requirements of subsection (j)(1) and (7) do not apply to
a swap if—

“(A) no derivatives clearing organization registered under this Act will
accept the swap for clearing; or

“(B) one of the counterparties to the swap—

“(i) is not a swap dealer or major swap participant; and

“(ii) does not meet the eligibility requirements of any derivatives
clearing organization that clears the swap.”.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7
U.S.C. 7a-1) are amended to read as follows:

“(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing
organization, unless registered with the Commission, directly or indirectly to make use of the
mails or any means or instrumentality of interstate commerce to perform the functions of a
derivatives clearing organization described in section 1a(10) of this Act with respect to—

“(1) a contract of sale of a commodity for future delivery (or option on such a
contract) or option on a commodity, in each case unless the contract or option is—
“(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

“(B) 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

“(2) a swap.

“(b) VOLUNTARY REGISTRATION.—

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

“(2) CLEARING AGENCIES.—A derivatives clearing organization may clear

security-based swaps that are required to be cleared by a person who is registered as a


(2) 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 a bank or a clearing agency

registered with the Securities and Exchange Commission under the Securities Exchange Act of


“(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the

Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and

Exchange Commission shall jointly adopt uniform rules governing persons that are registered as

derivatives clearing organizations for swaps under this subsection and persons that are registered
as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15
U.S.C. 78a, et seq.).

“(i) CONSULTATION.—The Commission and the Securities and Exchange Commission
shall consult with the appropriate Federal banking agencies prior to adopting rules under this
section with respect to swaps.

“(j) 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 finds that such derivatives clearing organization is subject to comparable,
comprehensive supervision and regulation on a consolidated basis by the Securities and
Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the
organization’s home country.

“(k) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

“(B) shall—

“(i) review compliance with the core principles in section 5b(c)(2).

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

“(iv) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

“(C) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”.

(3) Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:

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

“(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply

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with the core principles specified in this paragraph and any requirement that the
Commission may impose by rule or regulation pursuant to section 8a(5). Except
where the Commission determines otherwise by rule or regulation, a derivatives
clearing organization shall have reasonable discretion in establishing the manner
in which it complies with the core principles.

“(B) FINANCIAL RESOURCES.—

“(i) The derivatives clearing organization shall have adequate
financial, operational, and managerial resources to discharge its
responsibilities.

“(ii) Financial resources shall at a minimum exceed the total
amount that would—

“(I) enable the derivatives clearing organization to meet its
financial obligations to its members and participants
notwithstanding a default by the member or participant creating the
largest financial exposure for that derivatives clearing organization
in extreme but plausible market conditions; and

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

“(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

“(i) The 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 organization; and
“(II) appropriate standards for determining eligibility of
agreements, contracts, or transactions submitted to the derivatives
clearing organization for clearing.
“(ii) The derivatives clearing organization shall have procedures in
place to verify that participation and membership requirements are met on
an ongoing basis.
“(iii) The derivatives clearing organization’s participation and
membership requirements shall be objective, publicly disclosed, and
permit fair and open access.
“(D) RISK MANAGEMENT.—
“(i) The derivatives clearing organization shall have the ability to
manage the risks associated with discharging the responsibilities of a
derivatives clearing organization through the use of appropriate tools and
procedures.
“(ii) The derivatives clearing organization shall measure its credit
exposures to its members and participants at least once each business day
and shall monitor such exposures throughout the business day.
“(iii) Through margin requirements and other risk control
mechanisms, a derivatives clearing organization shall limit its exposures to
potential losses from defaults by its members and participants so that the
operations of the derivatives clearing organization would not be disrupted
and non-defaulting members or participants would not be exposed to
losses that they cannot anticipate or control.

“(iv) Margin required from all members and participants shall be
sufficient to cover potential exposures in normal market conditions.
“(v) The models and parameters used in setting margin
requirements shall be risk-based and reviewed regularly.
“(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization
shall—
“(i) complete money settlements on a timely basis, and not less
than once each business day;
“(ii) employ money settlement arrangements that eliminate or
strictly limit the derivatives clearing organization’s exposure to settlement
bank risks, such as credit and liquidity risks from the use of banks to effect
money settlements;
“(iii) ensure money settlements are final when effected;
“(iv) maintain an accurate record of the flow of funds associated
with each money settlement;
“(v) have the ability to comply with the terms and conditions of
any permitted netting or offset arrangements with other clearing
organizations; and
“(vi) for physical settlements, establish rules that clearly state the
derivatives clearing organization’s obligations with respect to physical
deliveries. The risks from these obligations shall be identified and managed.

“(F) TREATMENT OF FUNDS.—

“(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

“(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the derivatives clearing organization’s access to the assets and funds is minimized.

“(iii) Assets and funds invested by the derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

“(G) DEFAULT RULES AND PROCEDURES.—

“(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

“(ii) The derivatives clearing organization’s default procedures shall be clearly stated, and they shall ensure that the derivatives clearing organization can take timely action to contain losses and liquidity pressures and to continue meeting its obligations.

“(iii) The default procedures shall be publicly available.
“(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

“(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the derivatives clearing organization and for resolution of disputes; and

“(ii) have the authority and ability to discipline, limit, suspend, or terminate a member’s or participant’s activities for violations of rules of the derivatives clearing organization.

“(I) SYSTEM SAFEGUARDS.—The 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 the development of 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 the timely recovery and resumption of operations and the fulfillment of the derivatives clearing organization’s responsibilities and obligations; and

“(iii) 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.

“(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct
oversight of the derivatives clearing organization.

“(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

“(L) PUBLIC INFORMATION.—

“(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the derivatives clearing organization’s services.

“(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing its clearing and settlement systems (including default procedures) available to market participants.

“(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

“(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the derivatives clearing organization;

“(II) clearing and other fees that the derivatives clearing organization charges its members and participants;

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

“(IV) other information relevant to participation in the settlement and clearing activities of the derivatives clearing organization; and

“(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by it.

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

“(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

“(ii) use relevant information obtained from the agreements in carrying out the clearing organization’s risk management program.

“(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this chapter, the derivatives clearing organization shall avoid—

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

“(ii) imposing any material anticompetitive burden.

“(O) GOVERNANCE FITNESS STANDARDS.—

“(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of owners and participants.

“(ii) The derivatives clearing organization shall establish and
enforce appropriate fitness standards for directors, members of any
disciplinary committee, and members of the derivatives clearing
organization, and any other persons with direct access to the settlement or
clearing activities of the derivatives clearing organization, including any
parties affiliated with any of the persons described in this subparagraph.

“(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall
establish and enforce rules to minimize conflicts of interest in the decision-
making process of the derivatives clearing organization and establish a process for
resolving such conflicts of interest.

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

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

(4) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is further
amended by adding after subsection (j), as added by this section, the following:

“(k) REPORTING.—

“(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall
provide to the Commission all information determined by the Commission to be
necessary to perform its responsibilities under this Act. The Commission shall adopt data
collection and maintenance requirements for swaps cleared by derivatives clearing
organizations that are comparable to the corresponding requirements for swaps accepted
by swap repositories and swaps traded on alternative swap execution facilities. Subject to
section 8, the Commission shall share such information, upon request, with the Board, the
Securities and Exchange Commission, the appropriate Federal banking agencies, the
Financial Services Oversight Council, and the Department of Justice or to other persons
the Commission deems appropriate, including foreign financial supervisors (including
foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps
shall provide to the Commission, or its designee, such information as is required by, and
in a form and at a frequency to be determined by, the Commission, in order to comply
with the public reporting requirements contained in section 8(j).”.

(6) Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in
the last sentence by adding “central bank and ministries” after “department” each place it
appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal
Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2))
are repealed.

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

“SEC 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

“(a) EXCLUSION.—Except as provided in subsection (b), no provisions of the Commodity
Exchange Act (7 U.S.C. 1, et seq.) shall apply to, and the Commodity Futures Trading
Commission and the Securities and Exchange Commission shall not exercise regulatory
authority under the Commodity Exchange Act with respect to, an identified banking product.

“(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product 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 swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)); 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.).”.

SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding after subsection (i) the following:

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

“(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3);

“(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting
(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) derivatives clearing organizations pursuant to section 5b(k)(2);

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

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

SEC. 715. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 20 the following:

“SEC. 21. SWAP REPOSITORIES.

“(a) REGISTRATION REQUIREMENT.—

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

“(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

“(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 repository.

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

“(c) DUTIES.—A swap repository shall—

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

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

“(3) provide to the Commission, or its designee, such information as is required
by, and in a form and at a frequency to be determined by, the Commission, in order to
comply with the public reporting requirements contained in section 8(j); and

“(4) make available, on a confidential basis pursuant to section 8, all data
obtained by the swap repository, including individual counterparty trade and position
data, to the Commission, the appropriate Federal banking agencies, the Financial Services
Oversight Council, the Securities and Exchange Commission, and the Department of
Justice or to other persons the Commission deems appropriate, including foreign financial
supervisors (including foreign futures authorities), foreign central banks, and foreign
ministries.

“(d) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person
that is required to be registered as a swap repository under this section shall register with the
Commission regardless of whether that person also is registered with the Securities and
Exchange Commission as a security-based swap repository.

“(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the
Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.”.

SEC. 716. REPORTING AND RECORDKEEPING.

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

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

“(a) IN GENERAL.—Any person who enters into a swap and—

“(1) did not clear the swap in accordance with section 2(j)(1); and

“(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

“shall meet the requirements in subsection (b).

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

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and
“(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

“(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.”.

SEC. 717. 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 716) the following:

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

“(a) REGISTRATION.—

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

“(2) It shall be unlawful for any person to act as a major swap participant unless such person shall have 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.—The application shall be made in such form and manner as
prescribed by the Commission, giving any information and facts as the Commission may
deem necessary concerning the business in which the applicant is or will be engaged.
Such person, when registered as a swap dealer or major swap participant, shall continue
to report and furnish to the Commission such information pertaining to such person's
business as the Commission may require.

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

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

“(5) TRANSITION.—Rules adopted under this section shall provide for the
registration of swap dealers and major swap participants no later than one year after the

“(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically
provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major
swap participant to permit any person associated with a swap dealer or a major swap
participant who is subject to a statutory disqualification to effect or be involved in
effecting swaps on behalf of such swap dealer or major swap participant, if such swap
dealer or major swap participant knew, or in the exercise of reasonable care should have
known, of such statutory disqualification.

“(c) DUAL REGISTRATION.—

“(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer
under this section shall register with the Commission regardless of whether that 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 that person also is a bank or is registered with the Securities and Exchange
Commission as a major security-based swap participant.

“(d) JOINT RULES.—

“(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-
the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
Exchange Commission shall jointly adopt uniform rules for persons that are registered as
swap dealers or major swap participants under this section and persons that are registered
as security-based swap dealers or major security-based swap participants under the

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the
Securities and Exchange Commission shall not prescribe rules imposing prudential
requirements (including activity restrictions) on swap dealers, major swap participants,
security-based swap dealers, or major security-based swap participants for which there is
a Prudential Regulator. This provision shall not be construed as limiting the authority of
the Commission and the Securities and Exchange Commission to prescribe appropriate
business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—
“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(B) NON-BANK 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 as the Commission and the Securities and Exchange Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

“(2) JOINT RULES.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the Prudential Regulators, shall jointly adopt rules imposing
capital and margin requirements under this subsection for swap dealers and major
swap participants for which there is no Prudential Regulator.

“(3) CAPITAL.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting
capital requirements under this subsection, the Prudential Regulators shall
impose:

“(i) a capital requirement that is greater than zero for swaps that
are cleared by a derivatives clearing organization; and

“(ii) to offset the greater risk to the swap dealer or major swap
participant and to the financial system arising from the use of swaps that
are not centrally cleared, higher capital requirements for swaps that are not
cleared by a registered derivatives clearing organization than for swaps
that are centrally cleared.

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital
requirements set by the Commission and the Securities and Exchange
Commission under this subsection shall be as strict as or stricter than the capital
requirements set by the Prudential Regulators under this subsection.

“(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board
for swaps of bank holding companies and Tier 1 financial holding companies on a
consolidated basis shall be as strict as or stricter than the capital requirements set
by the Prudential Regulators under this subsection.

“(4) MARGIN.—

“(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.— The
Prudential Regulators shall impose both initial and variation margin requirements under this subsection on all swaps that are not cleared by a registered derivatives clearing organization, except that the Prudential Regulators may, but are not required to, impose margin requirements with respect to swaps in which one of the counterparties is—

“(i) neither a swap dealer, major swap participant, security-based swap dealer nor a major security-based swap participant;

“(ii) using the swap as part of an effective hedge under generally accepted accounting principles; and

“(iii) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

“(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than margin requirements for swaps set by the Prudential Regulators.

“(f) REPORTING AND RECORDKEEPING.—

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

“(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which

“(i) there is a Prudential Regulator shall keep books and records of
all activities related to its business as a swap dealer or major swap
participant in such form and manner and for such period as may be
prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator shall keep books and records
in such form and manner and for such period as may be prescribed by the
Commission by rule or regulation; and

“(C) shall keep such books and records open to inspection and
examination by any representative of the Commission.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Securities and Exchange
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
adopt rules governing reporting and recordkeeping for swap dealers, major swap
participants, security-based swap dealers, and major security-based swap participants.

“(g) DAILY TRADING RECORDS.—

“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall
maintain daily trading records of its swaps and all related records (including related cash
or forward transactions) and recorded communications including but not limited to
electronic mail, instant messages, and recordings of telephone calls, for such period as
may be prescribed by the Commission by rule or regulation.

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

“(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap
participant shall maintain daily trading records for each customer or counterparty in such
manner and form as to be identifiable with each swap transaction.

“(4) Audit Trail.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

“(5) Rules.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(h) Business Conduct Standards.—

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

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

“(B) diligent supervision of its business as a swap dealer;

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

“(D) such other matters as the Commission shall determine to be necessary or appropriate.

“(2) 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; and

“(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

“(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

“(3) RULES.—The Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009.

“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—
“(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

“(j) DEALER RESPONSIBILITIES.—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) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Prudential Regulator for such 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.

“(3) 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 such swap dealer or major swap participant, as applicable, upon request.

“(4) 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 assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

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

“(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the swap dealer or major swap participant shall avoid—

“(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

“(k) RULES.—The Commission, the Securities and Exchange Commission, and the Prudential Regulators shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.”.

SEC. 718. CONFLICTS OF INTEREST.
Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) 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 assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

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

SEC. 719. ALTERNATIVE SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by inserting after section 5g the following:

“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.

“(a) REGISTRATION.—

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

“(2) DUAL REGISTRATION.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as an alternative swap execution facility.

“(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is
registered under subsection (a) may trade 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 an alternative swap execution facility and uses the same electronic trade execution system for trading on the contract market and the alternative swap execution facility, identify whether the electronic trading is taking place on the contract market or the alternative swap execution facility.

“(d) Criteria for Registration.—

“(1) In General.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) Deterrence of Abuses.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

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

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

“(3) Trading Procedures.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.
“(4) Financial integrity of transactions.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

“(e) Core principles for alternative swap execution facilities.—

“(1) In general.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) Compliance with rules.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

“(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.—The swap execution facility shall 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 information to perform any of the functions described in this subsection;

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

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

“(6) POSITION LIMITS OR ACCOUNTABILITY.—

“(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, and to eliminate or prevent excessive speculation as described in section 4a(a), the swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

“(B) 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.

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

“(8) TIMELY PUBLICATION OF TRADING INFORMATION.—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.

“(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall
maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

“(10) 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 actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.

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

“(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

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

“(12) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

“(ii) shall—

“(I) review compliance with the core principles in section 5h(e).

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

“(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(IV) ensure compliance with commodity laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

“(iii) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the commodity laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such
compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.


SEC. 720. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1, et seq.) are repealed.

SEC. 721. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

“(9) EXECUTION OF TRANSACTIONS.—

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

“(B) The rules may authorize, for bona fide business purposes—

“(i) transfer trades or office trades;

“(ii) an exchange of

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

“(II) futures for cash commodities; or

“(III) futures for swaps; or

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

(b) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding after paragraph (18) the following:

“(19) FINANCIAL RESOURCES.—The board of trade shall demonstrate that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade’s financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of one year, calculated on a rolling basis.

“(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 give 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 board of trade’s responsibilities and obligations; and

“(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.”.

SEC. 722. MARGIN.

Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph (7)(C), by striking “, excepting the setting of levels of margin”.

SEC. 723. POSITION LIMITS.

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

(1) inserting “(1)” after “(a),”;

(2) striking “on electronic trading facilities with respect to a significant price discovery contract” in the first sentence and inserting “swaps that perform or affect a significant price discovery function with respect to regulated markets”;

(3) inserting “, including any group or class of traders,” in the second sentence after “held by any person”;  

(4) striking “on an electronic trading facility with respect to a significant price discovery contract,” in the second sentence and inserting “swaps that perform or affect a
significant price discovery function with respect to regulated markets,”; and

(5) inserting at the end the following:

“(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

“(A) contracts listed by designated contract markets;

“(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

“(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

“(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

“(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;

“(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market
based upon the same underlying commodity so as to permit market participants to
effectively arbitrage between the markets by simultaneously maintaining positions
or executing trades in the swaps on a frequent and recurring basis;

“(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent
and recurring basis, bids, offers, or transactions in a contract traded on a regulated
market are directly based on, or are determined by referencing, the price
generated by the swap;

“(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps
being traded in the commodity is sufficient to have a material effect on another
contract traded on a regulated market; and

“(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 it may establish
under this section with respect to position limits.”.

(b) 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 alternative 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 alternative swap execution facility”.

SEC. 724. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking “The board of trade shall have” and inserting “Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have”.

(b) Section 5b(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 7a-1(c)(2)(A)) is amended by striking “The applicant shall have” and inserting “Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the applicant shall have”.

(c) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended—

(1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and 5h(e)”; and

(2) in paragraph (2), by striking “shall not” and inserting “may”.

(d) Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a-2(c)(1)) is amended by inserting “(A)” after “IN GENERAL.—” and adding at the end the following:

“(B) Unless section 805(e) of the Payment, Clearing, and Settlement Supervision Act of 2009 applies, the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment shall become effective, pursuant to the registered entity’s certification, 10 business days after the Commission’s receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an
inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

“(C) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of such notification.”.

(e) Section 5c(d) of the Commodity Exchange Act (7 U.S.C. 7a-2(d)) is repealed.

SEC. 725. FOREIGN BOARDS OF TRADE.

(a) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended by striking “No rule or regulation” and inserting “Except as provided in paragraphs (1) and (2), no rule or regulation”.

(b) Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before “The Commission” the following:

“(1) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides 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, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, “direct access” refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

“(2) LINKED CONTRACTS.— It shall be unlawful for a foreign board of trade to
provide to the members of the foreign board of trade or other participants located in the
United States direct access to the electronic trading and order-matching system of the
foreign board of trade with respect to an agreement, contract, or transaction that settles
against any price (including the daily or final settlement price) of 1 or more contracts
listed for trading on a registered entity, unless the Commission determines that—

“(A) the foreign board of trade makes public daily trading information
regarding the agreement, contract, or transaction that is comparable to the daily
trading information published by the registered entity for the 1 or more contracts
against which the agreement, contract, or transaction traded on the foreign board
of trade settles; and

“(B) 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—

“(I) the information that the foreign board of trade will make publicly available;

“(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

“(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

“(IV) 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 with information necessary to publish reports on aggregate trader positions for the agreement, contract,
or transaction traded on the foreign board of trade that are comparable to
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.

“(3) EXISTING FOREIGN BOARDS OF TRADE.—Paragraphs (1) and (2) shall not be
effective with respect to any foreign board of trade to which the Commission has granted
direct access permission before the date of the enactment of this subsection until the date
that is 180 days after such date of enactment.

“(4) PERSONS LOCATED IN THE UNITED STATES.—”.

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7 U.S.C. 6(a)) is amended by
inserting “or by subsection (f)” after “Unless exempted by the Commission pursuant to
subsection (c)”; and

(2) Section 4 of the Commodity Exchange Act (7 U.S.C 6) is further amended by
adding at the end the following:

“(f) 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
subsections (b)(1) and (b)(2).”.

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the
Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:
“(5) **CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.**—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.”.

**SEC. 726. LEGAL CERTAINTY FOR SWAPS.**

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

“(4) **CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.**—

“(A) No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and

“(B) 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 thereto shall be entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the
definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).”.

SEC. 727. MULTILATERAL CLEARING ORGANIZATIONS.

(a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended by striking “section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act” and inserting “section 2(c) or 2(f) of such Act”;

(b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421) is further amended by inserting at the end the following:

“(4) The term “over-the-counter derivative instrument” does not include a swap or a security-based swap as defined in sections 1a(35) and 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and 1a(38)).”.

SEC. 728. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by adding the following new section after section 4b:

“SEC. 4b-1. PRIMARY ENFORCEMENT AUTHORITY.

“(a) CFTC.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of Subtitle A of the Over-the-Counter Derivatives Market Act of 2009 with respect to any person.

“(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of 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) REFERRAL.—If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that such swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(d) BACKSTOP ENFORCEMENT AUTHORITY. —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 recommendation under subsection (c), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.”.

SEC. 729. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”; and

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),” and inserting “or swap,”;

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting “or swap” before “if the transaction is used or may be used”; 

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting “or of any swap,” before “or to corner”; 

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by
inserting “swap repository,” before “or futures association”;

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended by inserting “swap repository,” before “or registered futures association” and by inserting “, or swaps,” before “on the basis”; and

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding the following new paragraph (6) and renumber existing paragraphs (6) through (10) as (7) through (11):

“(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository or alternative swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Over-the-Counter Derivatives Markets Act of 2009.”.

SEC. 730. RETAIL COMMODITY TRANSACTIONS.

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))”;

(2) in paragraph (2), by inserting after subparagraph (C) the following:

“(D) RETAIL COMMODITY TRANSACTIONS.—

“(i) 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) Clause (i) shall not apply to—

“(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

“(II) any security;

“(III) a contract of sale that—

“(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

“(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

“(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the

“(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) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

“(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

“(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

“(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.”.

SEC. 731. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1, et seq.) is amended by adding after section 4s
“SEC. 4t. LARGE SWAP TRADER REPORTING.

“(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to regulated markets if—

“(1) such person shall directly or indirectly enter into such swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

“unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep 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) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(c) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly
or indirectly controlled by such person.

“(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).”

SEC. 732. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 733. ANTITRUST.

Nothing in the amendments made by this title shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term “antitrust laws” has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

SEC. 734. EFFECTIVE DATE.

This title is effective 180 days after the date of enactment.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 751. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting “(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)” after the word “securities” in each place it appears;

(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 security-based swap participant” in its place in subparagraph (B)(i)(I);

(B) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (B)(i)(II);

(C) by striking “or government securities dealer” and adding “government securities dealer, security-based swap dealer or major security-based swap participant” in its place in subparagraph (C); and

(D) by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,” in subparagraph (D); and

(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(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

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

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

“(68) SECURITY-BASED SWAP.—The term ‘security-based swap’ has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

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

“(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’ has the same meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

“(71) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’ has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).

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

“(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(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

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

”(76) SECURITY-BASED SWAP AGREEMENT.—

“(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this
Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term
‘security-based swap agreement’ means a swap agreement as defined in section
206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material
term is based on the price, yield, value, or volatility of any security or any group
or index of securities, or any interest therein.

“(B) EXCLUSIONS.—The term ‘security-based swap agreement’ does not
include any security-based swap.”.

SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED
SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c
note) is repealed and the section is reserved;

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) is amended by striking “(as defined in section 206B of the
Gramm-Leach-Bliley Act)” each place that such term appears;

(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 “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”; and

(B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act” and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended—

(1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

“(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 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, 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 he knew or had
reasonable ground to believe was so false or misleading.

“(5) For a consideration, received directly or indirectly from a dealer, broker,
security-based swap dealer, major security-based swap participant or other person selling
or offering for sale or purchasing or offering to purchase the security, 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) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section
206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

(4) Section 15(c)(1) is amended—

(A) in subparagraph (A, by striking “, or any security-based swap
agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and
(B) in subparagraphs (B) and (C), by striking “agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears;

(5) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106-554; 114 Stat. 2763A-455) is amended by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(6) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking “(as defined in section 206(b) of the Gramm-Leach-Bliley Act)”;

(B) in subsection (b), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” in each place that the term appears;

(C) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(7) Section 20 (15 U.S.C. 78t) is amended —

(A) in subsection (d), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”; and,

(B) in subsection (f), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”;

(8) Section 21A (15 U.S.C. 78u-1) is amended—

(A) in subsection (a)(1), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)” and,

(B) in subsection (g), by striking “(as defined in section 206B of the Gramm-Leach-Bliley Act)”.

SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.
(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3:

"SEC. 3A. CLEARING FOR SECURITY-BASED SWAPS.

"(a) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (7), it shall be unlawful to enter into a security-based swap that is standardized unless—

"(A) the security-based swap is cleared by a clearing agency registered under section 17A of this Act; and

"(B) the rules of the clearing agency described in subparagraph (A) prescribe that all security-based swaps with the same terms and conditions are fungible and may be offset with each other.

"(2) STANDARDIZATION IF CLEARED.—A security-based swap that is accepted for clearing by any clearing agency shall be presumed to be standardized.

"(3) SECURITY-BASED SWAPS DESIGNATED AS STANDARDIZED.—

"(A) JOINT RULES.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules to further define the term ‘standardized.’ In adopting such rules, the Commission and the Commodity Futures Trading Commission shall jointly define the term ‘standardized’ as broadly as possible, after taking into account the following factors:

"(i) the extent to which any of the terms of the security-based swap, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions;
“(ii) the volume of transactions in the security-based swap;

“(iii) the extent to which the terms of the security-based swap are similar to the terms of other agreements, contracts, or transactions that are centrally cleared;

“(iv) whether any differences in the terms of the security-based swap, compared to other agreements, contracts, or transactions that are centrally cleared, are of economic significance; and

(v) any other factors the Commission and Commodity Futures Trading Commission determine to be appropriate.

“(B) The Commission may separately designate a particular security-based swap or class of security-based swaps as standardized, taking into account the factors enumerated in paragraphs (3)(i)-(v) and the joint rules adopted in subparagraph (A).

“(4) PREVENTION OF EVASION.— The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this Act.

“(5) REQUIRED REPORTING.—Both counterparties to a security-based swap that is not accepted for clearing by any clearing agency shall report such a security-based swap either to a security-based swap repository described in subsection 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe.

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

“(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

“(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of:

“(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

“(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

“(7) MANDATORY TRADING.—Except as provided in paragraph (8), a security-based swap that is standardized shall be traded on an exchange or an alternative swap execution facility registered under section 3B.

“(8) EXCEPTION.—The requirements of subsection (a)(1) and (7) do not apply to a security-based swap if—

“(A) no clearing agency will accept the security-based swap for clearing;

or

“(B) one of the counterparties to the security-based swap—

“(i) is not a security-based swap dealer or a major security-based
swap participant; and

“(ii) does not meet the eligibility requirements of any clearing
agency that clears the security-based swap.

“(9) Voluntary registration.—

“(A) Clearing agencies.—A person that clears agreements, contracts, or
transactions that are not required to be cleared under this Act may register with
the Commission as a clearing agency.

“(B) Derivatives clearing organizations.—A clearing agency may
clear swaps that are required to be cleared by a person who is registered as a
derivatives clearing organization under the Commodity Exchange Act (7 U.S.C.
1, et seq.).

“(10) Required registration for banks and clearing agencies.—A person
that is required to be registered as a clearing agency under this section shall register with
the Commission regardless of whether the person is also a bank or a derivatives clearing
organization registered with the Commodity Futures Trading Commission under the
Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(b) Reporting.—

“(1) In general.—A clearing agency that clears security-based swaps shall
provide to the Commission all information determined by the Commission to be
necessary to perform its responsibilities under this Act. The Commission shall adopt data
collection and maintenance requirements for security-based swaps cleared by clearing
agencies that are comparable to the corresponding requirements for security-based swaps
accepted by security-based swap repositories and security-based swaps traded on
alternative swap execution facilities. The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

“(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

“(c) DESIGNATION OF COMPLIANCE OFFICER.—

“(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

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

“(A) report directly to the board or to the senior officer of the clearing agency; and

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

“(C) be responsible for administering the policies and procedures required to be established pursuant to this section; and

“(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this
“(E) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(3) **Annual Reports Required.**—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

“(d) **Consultation.**—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.

“(e) **Harmonization of Rules.**—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1, *et seq.* ) and persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.* ).”

(b) **Alternative Swap Execution Facilities.**—The Securities Exchange Act of 1934
(15 U.S.C. 78a, *et seq.*.) is amended by adding after section 3A the following:

“SEC. 3B. ALTERNATIVE SWAP EXECUTION FACILITIES.

“(a) Registration.—

(1) IN GENERAL.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as an alternative swap execution facility under this section.

“(2) Dual registration.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as an alternative swap execution facility.

“(b) Requirements for Trading.—An alternative swap execution facility that is registered under subsection (a) may trade any security-based swap.

“(c) Trading by Exchanges.—An exchange shall, to the extent that the exchange also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the exchange and the alternative swap execution facility, identify whether the electronic trading is taking place on the exchange or the alternative swap execution facility.

“(d) Criteria for Registration.—

“(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that it meets the criteria specified herein.

“(2) Deterrence of abuses.—The swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—
“(A) obtain information necessary to perform the functions required under this section; or

“(B) use means to—

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

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

“(3) TRADING PROCEDURES.—The swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

“(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

“(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

“(1) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation. Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

“(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and
conditions of the security-based swaps traded on or through the facility and any
limitations on access to the facility.

“(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.—The swap execution facility shall monitor
trading in security-based swaps to prevent manipulation and price distortion 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 information to perform any of the functions described in this
subsection;
“(B) provide the information to the Commission upon request; and
“(C) have the capacity to carry out such international information-sharing
agreements as the Commission may require.

“(6) POSITION LIMITS OR ACCOUNTABILITY.—
“(A) To reduce the potential threat of market manipulation or congestion,
the swap execution facility shall adopt for each of its contracts, where necessary
and appropriate, position limitations or position accountability.
“(B) For any contract that is subject to a position limitation established by
the Commission pursuant to section 10B, the swap execution facility shall set its
position limitation at a level no higher than the Commission limitation.

“(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

“(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

“(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

“(10) 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 actions that result in any unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading on the swap execution facility.
“(11) CONFLICTS OF INTEREST.—The swap execution facility shall—

“(A) establish and enforce rules to minimize conflicts of interest in its
decision-making process; and

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

“(12) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

“(ii) shall—

“(I) review compliance with the core principles in section
3B(e).

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

“(III) be responsible for administering the policies and
procedures required to be established pursuant to this section; and

“(IV) ensure compliance with securities laws and the rules
and regulations issued thereunder, including rules prescribed by
the Commission pursuant to this section.
“(iii) The compliance officer shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

“(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.”;

“(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization’s home country.

“(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly prescribe rules governing the regulation of alternative swap execution facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b-3).”.
Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(l) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).”.


“SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

(a) Registration.—

“(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

“(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

(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.—The application shall be made in such form and manner as
prescribed by the Commission, giving any information and facts as the Commission may
demn necessary concerning the business in which the applicant is or will be engaged.
Such person, when registered as a security-based swap dealer or major security-based
swap participant, shall continue to report and furnish to the Commission such information
pertaining to such person's business as the Commission may require.

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

“(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission
may prescribe rules applicable to security-based swap dealers and major security-based
swap participants, including rules that limit the activities of security-based swap dealers
and major security-based swap participants. Except as provided in subsections (c) and
(e), the Commission may provide conditional or unconditional exemptions from rules
prescribed under this section for security-based swap dealers and major security-based
swap participants that are subject to substantially similar requirements as brokers or
dealers.

“(5) TRANSITION.—Rules adopted under this section shall provide for the
registration of security-based swap dealers and major security-based swap participants no
later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act
of 2009.

“(c) DUAL REGISTRATION.—

“(1) SECURITY-BASED SWAP DEALERS.—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 that person also is a bank or is registered with the

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Commodity Futures Trading Commission as a swap dealer.

“(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—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 that person also is a bank or is registered with the Commodity Futures Trading Commission as a major swap participant.

“(d) JOINT RULES.—

“(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act and persons that are registered as swap dealers or major swap participants under the Commodity Exchange Act (7 U.S.C. 1, et seq.).

“(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

“(e) CAPITAL AND MARGIN REQUIREMENTS.—

“(1) IN GENERAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major
security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Commodity Futures Trading Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

“(2) JOINT RULES.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Prudential Regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity
Futures Trading Commission, in consultation with the Prudential Regulators, shall jointly 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.

“(3) CAPITAL.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—In setting capital requirements under this subsection, the Prudential Regulators shall impose:

“(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

“(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Prudential Regulators under this subsection.

“(C) BANK HOLDING COMPANIES.—Capital requirements set by the Board for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements set by the Prudential

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Regulators under this subsection.

“(4) MARGIN.—

“(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—The Prudential Regulators shall impose both initial and variation margin requirements under this subsection on all security-based swaps that are not cleared by a registered clearing agency, except that the Prudential Regulators may, but are not required to, impose margin requirements with respect to security-based swaps in which—

“(i) one of the counterparties is not a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant;

“(ii) the counterparty is using the security-based swap as part of an effective hedge under generally accepted accounting principles; and

“(iii) the counterparty is predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

“(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Prudential Regulators.

“(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 prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

“(B) for which—

“(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

“(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

“(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, 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 its security-based
swaps and all related records (including related transactions) and recorded
communications including but not limited to electronic mail, instant messages, and
recordings of telephone calls, for such period as may be prescribed by the Commission
by rule or regulation.

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

“(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major
security-based swap participant shall maintain daily trading records for each customer or
counterparty in such manner and form as to be identifiable with each security-based swap
transaction.

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

“(5) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, 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 business conduct standards as may be
prescribed by the Commission by rule or regulation addressing—
“(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 its business as a security-based swap dealer;

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

“(D) such other matters as the Commission shall determine to be
necessary or appropriate.

“(2) 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 security-based swap
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 security-based swap
(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
security-based swap;

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

“(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
“(C) establish such other standards and requirements as the Commission
may determine are necessary or appropriate in the public interest, for the
protection of investors, or otherwise in furtherance of the purposes of this title.
“(3) RULES.—The Commission and the Commodity Futures Trading
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
prescribe rules under this subsection governing business conduct standards for swap
dealers, major swap participants, security-based swap dealers, and major security-based
swap participants within 365 days of the enactment of the Over-the-Counter Derivatives
“(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—
“(1) IN GENERAL.—Each registered security-based swap dealer and major
security-based swap participant shall conform with standards, as may be prescribed by
the Commission by rule or regulation, addressing timely and accurate confirmation,
processing, netting, documentation, and valuation of all security-based swaps.
“(2) RULES.—Within 365 days of the enactment of the Over-the-Counter
Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading
Commission, in consultation with the appropriate Federal banking agencies, shall jointly
adopt rules governing documentation and back office standards for swap dealers, major
swap participants, security-based swap dealers, and major security-based swap
participants.
“(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major

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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) 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 such 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.

“(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based 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 such security-based swap dealer or major security-based swap participant, as applicable, upon request.

“(4) 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 assure that the
activities of any person within the firm relating to research or analysis of the price
or market for any security are separated by appropriate informational partitions
within the firm from the review, pressure, or oversight of those whose
involvement in trading or clearing activities might potentially bias their judgment
or supervision; and

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

“(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve
the purposes of this Act, the security-based swap dealer or major security-based swap
participant shall avoid—

“(A) adopting any processes or taking any actions that result in any
unreasonable restraints of trade; or

“(B) imposing any material anticompetitive burden on trading.”.

“(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the
Prudential Regulators shall consult with each other prior to adopting any rules under the Over-

“(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 subsection (b), the Commission shall have primary authority to enforce the provisions of Subtitle B of the Over-the-Counter Derivatives Market Act of 2009 with respect to any person.

“(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

“(C) REFERRAL.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

“(D) BACKSTOP ENFORCEMENT AUTHORITY. —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 recommendation under
subparagraph (C), the Prudential Regulator may initiate an enforcement proceeding as permitted under Federal law.

“(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing 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 rejection 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) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

“(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).

“(4) 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 contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.”.

(e) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.——

Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1) – (3)) are amended to read as follows:

“(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.”.

(f) 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.”.

(g) 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) AGGREGATE POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions that may be held by any person or persons across—

“(1) securities listed on a national securities exchange; and

“(2) security-based swaps that perform or affect a significant price discovery function with respect to regulated markets.

“(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.—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:

“(1) to adopt rules regarding the size of positions in any security-based swap and any security on which such security-based swap is based that may be held by (A) any member of such self-regulatory organization or (B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security; and

“(2) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under paragraph (a).”.
“(d) LARGE SECURITY-BASED SWAP TRADER REPORTING.—

“(1) It shall be unlawful for any person to enter into any security-based swap that performs or affects a significant price discovery function with respect to regulated markets if—

“(A) such person shall directly or indirectly enter into such security-based swaps during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

“(B) such person shall directly or indirectly have or obtain a position in such security-based swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

“unless such 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) as the Commission may by rule or regulation require and unless, in accordance with the rules and regulations of the Commission, such person shall keep books and records of all such security-based swaps and any transactions and positions in any related security traded on or subject to the rules of any national securities exchange, and of purchase and sale commitments of, such a security.

“(2) Such books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

“(3) Such books and records shall be open at all times to inspection and examination by any representative of the Commission.

“(4) For the purpose of this subsection, the security-based swaps, and securities transactions and positions of any person shall include such security-based swaps,
transactions and positions of any persons directly or indirectly controlled by such person.

“(e) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a
security-based swap performs or affects a significant price discovery function with respect to
regulated markets, the Commission shall consider, as appropriate:

“(1) PRICE LINKAGE.—The extent to which the security-based swap uses or
otherwise relies on a daily or final settlement price, or other major price parameter, of a
security traded on a national securities exchange, to value a position, transfer or convert a
position, financially settle a position, or close out a position;

“(2) ARBITRAGE.—The extent to which the price for the security-based swap is
sufficiently related to the price of a security traded on a national securities exchange so as
to permit market participants to effectively arbitrage between the markets by
simultaneously maintaining positions or executing trades in both markets on a frequent
and recurring basis;

“(3) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and
recurring basis, bids, offers, or transactions in a security traded on a national securities
exchange are directly based on, or are determined by referencing, the price generated by
the security-based swap;

“(4) MATERIAL LIQUIDITY.—The extent to which the volume of security-based
swaps being traded is sufficient to have a material effect on a security traded on a
national securities exchange; and

“(5) OTHER MATERIAL FACTORS.—Such other material factors as the Commission
specifies by rule or regulation as relevant to determine whether a security-based swap
serves a significant price discovery function with respect to a regulated market.
Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

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

“(1) IN GENERAL.— The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3);

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

“(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

“(A) clearing agencies pursuant to section 3A;

“(B) security-based swap repositories pursuant to subsection (n); and

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

“(n) SECURITY-BASED SWAP REPOSITORIES.—

“(1) REGISTRATION REQUIREMENT.—

“(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.
“(B) INSPECTION AND EXAMINATION.—Registered security-based swap
repositories shall be subject to inspection and examination by any representatives
of the Commission.

“(2) 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 security-based swap repository.

“(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall
prescribe data collection and data maintenance standards for security-based swap
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 that clear security-based swaps.

“(3) DUTIES.—A security-based swap repository shall—

“(A) accept data prescribed by the Commission for each security-based
swap under this paragraph (2);

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

“(C) provide to the Commission, or its designee, such information as is
required by, and in a form and at a frequency to be determined by, the
Commission, in order to comply with the public reporting requirements contained
in subsection (m); and

“(D) make available, on a confidential basis, all data obtained by the
security-based swap repository, including individual counterparty trade and
position data, to the Commission, the appropriate Federal banking agencies, the
Commodity Futures Trading Commission, the Financial Services Oversight
Council, and the Department of Justice or to other persons the Commission deems
appropriate, including foreign financial supervisors (including foreign futures
authorities), foreign central banks, and foreign ministries.

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

“(5) HARMONIZATION OF RULES.—Not later than 180 days after the effective date
of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the
Commodity Futures Trading Commission shall jointly adopt uniform rules governing
persons that are registered under this section and persons that are registered as swap
repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform
rules that specify the data elements that shall be collected and maintained by each
repository.

“(6) EXEMPTIONS.—The Commission may exempt, conditionally or
unconditionally, a security-based swap repository from the requirements of this section if
the Commission finds that such security-based swap repository is subject to comparable,
comprehensive supervision or regulation on a consolidated basis by the Commodity
Futures Trading Commission, a Prudential Regulator or the appropriate governmental
authorities in the organization’s home country.”.
SEC. 754. REPORTING AND RECORDKEEPING.

(a) 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 CERTAIN SECURITY-BASED SWAPS.

“(a) IN GENERAL.—Any person who enters into a security-based swap and—

“(1) did not clear the security-based swap in accordance with section 3A; and

“(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

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

“(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

“(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

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

(b) **Beneficial Ownership Reporting.**—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and” after “Alaska Native Claims Settlement Act,”; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule” after “subsection (d)(1) of this section”.

(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 or other derivative instrument that the Commission may define by rule,” after “subsection (d)(1) of this section”.

(d) **Administrative Proceeding Authority.**—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding “security-based swap dealer, major security-based swap participant,” after “government securities dealer,”; and

(2) in subparagraph (F), by adding “, or security-based swap dealer, or a major security-based swap participant” after “or dealer”.

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(e) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by inserting “or security-based swaps” after “security futures products”.

SEC. 755. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

“(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of ‘bucket shops’ or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or
distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.”.

SEC. 756. AMENDMENTS TO THE SECURITIES ACT OF 1933; 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 provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35) and (38)).

“(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) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:
“(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).”.

SEC. 757. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 758. JURISDICTION.

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 have the authority to grant exemptions from the security-based swap provisions of the Over-the-Counter Derivatives Market Act of 2009, except as expressly authorized under the provisions of that Act.”.