

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

3 **SEC. 701. SHORT TITLE.**

4 This title may be cited as the “Over-the-Counter Derivatives Markets Act of 2009”.

5 **Subtitle A—Regulation of Swap Markets**

6 **SEC. 711. DEFINITIONS.**

7 (a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of
8 the Commodity Exchange Act (7 U.S.C. 1a) is amended—

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

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

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

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

14 “(B) a swap.”;

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

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

19 “(35) SWAP.—

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

22 “(i) is a put, call, cap, floor, collar, or similar option of any kind for

1 the purchase or sale of, or based on the value of, one or more interest or
2 other rates, currencies, commodities, securities, instruments of
3 indebtedness, indices, quantitative measures, or other financial or
4 economic interests or property of any kind;

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

10 “(iii) provides on an executory basis for the exchange, on a fixed
11 or contingent basis, of one or more payments based on the value or level
12 of one or more interest or other rates, currencies, commodities, securities,
13 instruments of indebtedness, indices, quantitative measures, or other
14 financial or economic interests or property of any kind, or any interest
15 therein or based on the value thereof, and that transfers, as between the
16 parties to the transaction, in whole or in part, the financial risk associated
17 with a future change in any such value or level without also conveying a
18 current or future direct or indirect ownership interest in an asset (including
19 any enterprise or investment pool) or liability that incorporates the
20 financial risk so transferred, including any agreement, contract, or
21 transaction commonly known as an interest rate swap, a rate floor, rate
22 cap, rate collar, cross-currency rate swap, basis swap, currency swap, total
23 return swap, equity index swap, equity swap, debt index swap, debt swap,

1 credit spread, credit default swap, credit swap, weather swap, energy
2 swap, metal swap, agricultural swap, emissions swap, or commodity swap;

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

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

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

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

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

14 “(iii) any put, call, straddle, option, or privilege on any security,
15 certificate of deposit, or group or index of securities, including any interest
16 therein or based on the value thereof, that is subject to the Securities Act
17 of 1933 (15 U.S.C. 77a *et seq.*) and the Securities Exchange Act of 1934
18 (15 U.S.C. 78a *et seq.*);

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

22 “(v) any agreement, contract, or transaction providing for the
23 purchase or sale of one or more securities on a fixed basis that is subject to

1 the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and the Securities
2 Exchange Act of 1934 (15 U.S.C. 78a *et seq.*);

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

11 “(vii) any note, bond, or evidence of indebtedness that is a security
12 as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C.
13 77b(a)(1)); or

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

15 “(I) based on a security; and

16 “(II) entered into directly or through an underwriter (as
17 defined in section 2(a)(11) of the Securities Act of 1933) (15
18 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes
19 of raising capital, unless such agreement, contract, or transaction is
20 entered into to manage a risk associated with capital raising;

21 “(ix) any foreign exchange swap;

22 “(x) any foreign exchange forward;

23 “(xi) any agreement, contract, or transaction a counterparty of

1 which is a Federal Reserve bank, the United States government or an
2 agency of the United States government that is expressly backed by the
3 full faith and credit of the United States; and

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

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

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

16 (A) in subparagraph (A)—

17 (i) in clause (vii), by striking “\$25,000,000” and inserting
18 “\$50,000,000”;

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

21 (B) in paragraph (C), by striking “determines” and inserting “and the
22 Securities and Exchange Commission may further jointly determine”.

23 (6) in paragraph (30) (as redesignated by subsection (a)), by—

1 (A) redesignating subparagraph (E) as subparagraph (G);

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

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

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

5 “(F) a swap repository; and”; and

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

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

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

11 “(38) SECURITY-BASED SWAP.—

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

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

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

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

1 statements, financial condition, or financial obligations of the
2 issuer.

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

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

15 “(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The
16 term ‘security-based swap’ shall be construed to include a master agreement that
17 provides for an agreement, contract, or transaction that is a security-based swap
18 pursuant to subparagraph (A), together with all supplements to any such master
19 agreement, without regard to whether the master agreement contains an
20 agreement, contract, or transaction that is not a security-based swap pursuant to
21 subparagraph (A), except that the master agreement shall be considered to be a
22 security-based swap only with respect to each agreement, contract, or transaction
23 under the master agreement that is a security-based swap pursuant to

1 subparagraph (A).”.

2 (9) by adding after paragraph (38) the following:

3 “(39) SWAP DEALER.—

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

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

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

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

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

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

23 (12) by adding after paragraph (41) the following:

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

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

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

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

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

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

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

14 “(i) a national bank; or

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

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

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

21 “(44) SECURITY-BASED SWAP DEALER.—

22 “(A) IN GENERAL.—The term ‘security-based swap dealer’ means any
23 person engaged in the business of buying and selling security-based swaps for

1 such person's own account, through a broker or otherwise.

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

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

7 “(45) GOVERNMENT SECURITY.—The term ‘government security’ has the same
8 meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C.
9 78c(a)(42)).”.

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

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

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

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

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

21 “(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR
22 SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-based
23 swap dealer or major security-based swap participant’ or ‘associated person of a security-

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

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

12 “(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—

13 The term ‘person associated with a swap dealer or major swap participant’ or ‘associated
14 person of a swap dealer or major swap participant’ means any partner, officer, director, or
15 branch manager of such swap dealer or major swap participant (or any person occupying
16 a similar status or performing similar functions), any person directly or indirectly
17 controlling, controlled by, or under common control with such swap dealer or major swap
18 participant, or any employee of such swap dealer or major swap participant, except that
19 any person associated with a swap dealer or major swap participant whose functions are
20 solely clerical or ministerial shall not be included in the meaning of such term other than
21 for purposes of section 4s(b)(6) of this Act.

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

23 “(50) SWAP REPOSITORY.—The term ‘swap repository’ means an entity that

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

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

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

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

13 (c) JOINT RULEMAKING UNDER THIS ACT.—

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

17 (2) TREASURY DEPARTMENT.—In the event that the Commodity Futures Trading
18 Commission and the Securities and Exchange Commission fail to jointly prescribe
19 uniform rules and regulations under any provision of this Act in a timely manner, the
20 Secretary of the Treasury, in consultation with the Commodity Futures Trading
21 Commission and the Securities and Exchange Commission, shall prescribe rules and
22 regulations under such provision. A rule prescribed by the Secretary of the Treasury shall
23 be enforced as if prescribed jointly by the Commodity Futures Trading Commission and

1 the Securities and Exchange Commission and shall remain in effect until the Secretary
2 rescinds the rule or until the effective date of a corresponding rule prescribed jointly by
3 the Commodity Futures Trading Commission and the Securities and Exchange
4 Commission in accordance with this section, whichever is later.

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

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

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

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

22 (d) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is
23 amended by adding at the end the following: “The Commission shall not have the authority to

1 grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Market
2 Act of 2009, except as expressly authorized under the provisions of that Act.”.

3 **SEC. 712. JURISDICTION.**

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

6 (1) by striking “(C)” and “(D)” and inserting “(C), (D), and (G)”;

7 (2) by striking “subsections (c) through (i)” and inserting “subsections (c) and
8 (f)”;

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

11 (b) NO LIMITATION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1))
12 is amended by inserting after subparagraph (F) the following—

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

20 (c) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C.
21 2(c)(2)(A)) is amended—

22 (1) in clause (i) by striking “or”;

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

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

2 “(ii) a swap; or”.

3 **SEC. 713. CLEARING.**

4 (a) CLEARING REQUIREMENT.—

5 (1) Sections 2(d), 2(e), 2(g), and 2(h) of the Commodity Exchange Act (7 U.S.C.
6 2(d), 2(e), 2(g), and 2(h)) are repealed.

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

9 “(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (f), and
10 (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,
11 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are
12 applicable by their terms to registered entities and Commission registrants) governs or applies to
13 a swap.

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

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

19 “(j) CLEARING REQUIREMENT.—

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

22 “(A) the swap is cleared by a derivatives clearing organization registered
23 under this Act; and

1 “(B) the rules of the derivatives clearing organization described in
2 subparagraph (A) prescribe that all swaps with the same terms and conditions are
3 fungible and may be offset with each other.

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

6 “(3) SWAPS DESIGNATED AS STANDARDIZED.—

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

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

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

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

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

23 “(v) any other factors the Commission and the Securities and

1 Exchange Commission determine to be appropriate.

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

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

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

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

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

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

23 “(i) 90 days after the effective date of the Over-the-Counter

1 Derivatives Markets Act of 2009; or

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

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

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

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

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

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

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

15 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

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

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

22 “(1) a contract of sale of a commodity for future delivery (or option on such a
23 contract) or option on a commodity, in each case unless the contract or option is—

1 “(A) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

2 “(B) a security futures product cleared by a clearing agency registered

3 with the Securities and Exchange Commission under the Securities Exchange Act

4 of 1934 (15 U.S.C. 78a, *et seq.*) ; or

5 “(2) a swap.

6 “(b) VOLUNTARY REGISTRATION.—

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

10 “(2) CLEARING AGENCIES.—A derivatives clearing organization may clear
11 security-based swaps that are required to be cleared by a person who is registered as a
12 clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*.”

13 (2) Section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by
14 adding at the end the following:

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

20 “(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the
21 Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
22 Exchange Commission shall jointly adopt uniform rules governing persons that are registered as
23 derivatives clearing organizations for swaps under this subsection and persons that are registered

1 as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15
2 U.S.C. 78a, *et seq.*).

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

6 “(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a
7 derivatives clearing organization from registration under this section for the clearing of swaps if
8 the Commission finds that such derivatives clearing organization is subject to comparable,
9 comprehensive supervision and regulation on a consolidated basis by the Securities and
10 Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the
11 organization’s home country.

12 “(k) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

18 “(B) shall—

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

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

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

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

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

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

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

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

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

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

6 “(B) FINANCIAL RESOURCES.—

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

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

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

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

20 “(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

21 “(i) The derivatives clearing organization shall establish—

22 “(I) appropriate admission and continuing eligibility
23 standards (including sufficient financial resources and operational

1 capacity to meet obligations arising from participation in the
2 derivatives clearing organization) for members of and participants
3 in the organization; and

4 “(II) appropriate standards for determining eligibility of
5 agreements, contracts, or transactions submitted to the derivatives
6 clearing organization for clearing.

7 “(ii) The derivatives clearing organization shall have procedures in
8 place to verify that participation and membership requirements are met on
9 an ongoing basis.

10 “(iii) The derivatives clearing organization’s participation and
11 membership requirements shall be objective, publicly disclosed, and
12 permit fair and open access.

13 “(D) RISK MANAGEMENT.—

14 “(i) The derivatives clearing organization shall have the ability to
15 manage the risks associated with discharging the responsibilities of a
16 derivatives clearing organization through the use of appropriate tools and
17 procedures.

18 “(ii) The derivatives clearing organization shall measure its credit
19 exposures to its members and participants at least once each business day
20 and shall monitor such exposures throughout the business day.

21 “(iii) Through margin requirements and other risk control
22 mechanisms, a derivatives clearing organization shall limit its exposures to
23 potential losses from defaults by its members and participants so that the

1 operations of the derivatives clearing organization would not be disrupted
2 and non-defaulting members or participants would not be exposed to
3 losses that they cannot anticipate or control.

4 “(iv) Margin required from all members and participants shall be
5 sufficient to cover potential exposures in normal market conditions.

6 “(v) The models and parameters used in setting margin
7 requirements shall be risk-based and reviewed regularly.

8 “(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization
9 shall—

10 “(i) complete money settlements on a timely basis, and not less
11 than once each business day;

12 “(ii) employ money settlement arrangements that eliminate or
13 strictly limit the derivatives clearing organization’s exposure to settlement
14 bank risks, such as credit and liquidity risks from the use of banks to effect
15 money settlements;

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

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

19 “(v) have the ability to comply with the terms and conditions of
20 any permitted netting or offset arrangements with other clearing
21 organizations; and

22 “(vi) for physical settlements, establish rules that clearly state the
23 derivatives clearing organization’s obligations with respect to physical

1 deliveries. The risks from these obligations shall be identified and
2 managed.

3 “(F) TREATMENT OF FUNDS.—

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

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

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

14 “(G) DEFAULT RULES AND PROCEDURES.—

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

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

23 “(iii) The default procedures shall be publicly available.

1 “(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

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

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

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

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

14 “(ii) establish and maintain emergency procedures, backup
15 facilities, and a plan for disaster recovery that allows for the timely
16 recovery and resumption of operations and the fulfillment of the
17 derivatives clearing organization’s responsibilities and obligations; and

18 “(iii) periodically conduct tests to verify that backup resources are
19 sufficient to ensure continued order processing and trade matching, price
20 reporting, market surveillance, and maintenance of a comprehensive and
21 accurate audit trail.

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

1 oversight of the derivatives clearing organization.

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

6 “(L) PUBLIC INFORMATION.—

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

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

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

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

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

22 “(III) the margin-setting methodology and the size and
23 composition of the financial resource package of the derivatives

1 clearing organization;

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

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

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

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

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

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

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

17 “(ii) imposing any material anticompetitive burden.

18 “(O) GOVERNANCE FITNESS STANDARDS.—

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

23 “(ii) The derivatives clearing organization shall establish and

1 enforce appropriate fitness standards for directors, members of any
2 disciplinary committee, and members of the derivatives clearing
3 organization, and any other persons with direct access to the settlement or
4 clearing activities of the derivatives clearing organization, including any
5 parties affiliated with any of the persons described in this subparagraph.

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

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

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

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

18 “(k) REPORTING.—

19 “(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall
20 provide to the Commission all information determined by the Commission to be
21 necessary to perform its responsibilities under this Act. The Commission shall adopt data
22 collection and maintenance requirements for swaps cleared by derivatives clearing
23 organizations that are comparable to the corresponding requirements for swaps accepted

1 by swap repositories and swaps traded on alternative swap execution facilities. Subject to
2 section 8, the Commission shall share such information, upon request, with the Board, the
3 Securities and Exchange Commission, the appropriate Federal banking agencies, the
4 Financial Services Oversight Council, and the Department of Justice or to other persons
5 the Commission deems appropriate, including foreign financial supervisors (including
6 foreign futures authorities), foreign central banks, and foreign ministries.

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

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

14 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

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

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

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

21 “(a) EXCLUSION.—Except as provided in subsection (b), no provisions of the Commodity
22 Exchange Act (7 U.S.C. 1, *et seq.*) shall apply to, and the Commodity Futures Trading
23 Commission and the Securities and Exchange Commission shall not exercise regulatory

1 authority under the Commodity Exchange Act with respect to, an identified banking product.

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

6 “(1) would meet the definition of swap in section 1a(35) of the Commodity
7 Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the
8 Commodity Exchange Act(7 U.S.C. 1a(38)); and

9 “(2) has become known to the trade as a swap or security-based swap, or
10 otherwise has been structured as an identified banking product for the purpose of evading
11 the provisions of the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), the Securities Act of
12 1933 (15 U.S.C. 77a, *et seq.*), or the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et*
13 *seq.*).”.

14 **SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.**

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

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

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

22 “(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a
23 derivatives clearing organization or a swap repository to carry out the public reporting

1 described in paragraph (1).

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

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

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

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

7 **SEC. 715. SWAP REPOSITORIES.**

8 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section
9 20 the following:

10 **“SEC. 21. SWAP REPOSITORIES.**

11 **“(a) REGISTRATION REQUIREMENT.—**

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

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

17 **“(b) STANDARD SETTING.—**

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

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

23 **“(3) COMPARABILITY.—**The standards prescribed by the Commission under this

1 subsection shall be comparable to the data standards imposed by the Commission on
2 derivatives clearing organizations that clear swaps.

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

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

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

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

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

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

22 “(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the
23 Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and

1 Exchange Commission shall jointly adopt uniform rules governing persons that are registered
2 under this section and persons that are registered as security-based swap repositories under the
3 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), including uniform rules that specify
4 the data elements that shall be collected and maintained by each repository.

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

10 **SEC. 716. REPORTING AND RECORDKEEPING.**

11 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section
12 4q the following:

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

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

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

16 “(2) did not have data regarding the swap accepted by a swap repository in
17 accordance with rules (including timeframes) adopted by the Commission under section
18 21,

19 “shall meet the requirements in subsection (b).

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

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

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

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

10 **SEC. 717. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR**
11 **SWAP PARTICIPANTS.**

12 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section
13 4r (as added by section 716) the following:

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

16 “(a) REGISTRATION.—

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

19 “(2) It shall be unlawful for any person to act as a major swap participant unless such
20 person shall have registered as a major swap participant with the Commission.

21 “(b) REQUIREMENTS.—

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

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

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

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

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

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

22 “(c) DUAL REGISTRATION.—

23 “(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer

1 under this section shall register with the Commission regardless of whether that person
2 also is a bank or is registered with the Securities and Exchange Commission as a
3 security-based swap dealer.

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

8 “(d) JOINT RULES.—

9 “(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-
10 the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and
11 Exchange Commission shall jointly adopt uniform rules for persons that are registered as
12 swap dealers or major swap participants under this section and persons that are registered
13 as security-based swap dealers or major security-based swap participants under the
14 Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*).

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

22 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

23 “(1) IN GENERAL.—

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

7 “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each
8 registered swap dealer and major swap participant for which there is not a
9 Prudential Regulator shall meet such minimum capital requirements and
10 minimum initial and variation margin requirements as the Commission and the
11 Securities and Exchange Commission shall by rule or regulation jointly prescribe
12 to help ensure the safety and soundness of the swap dealer or major swap
13 participant.

14 “(2) JOINT RULES.—

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

20 “(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Within
21 180 days of the enactment of the Over-the-Counter Derivatives Markets Act of
22 2009, the Commission and the Securities and Exchange Commission, in
23 consultation with the Prudential Regulators, shall jointly adopt rules imposing

1 capital and margin requirements under this subsection for swap dealers and major
2 swap participants for which there is no Prudential Regulator.

3 “(3) CAPITAL.—

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

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

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

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

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

22 “(4) MARGIN.—

23 “(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.— The

1 Prudential Regulators shall impose both initial and variation margin requirements
2 under this subsection on all swaps that are not cleared by a registered derivatives
3 clearing organization, except that the Prudential Regulators may, but are not
4 required to, impose margin requirements with respect to swaps in which one of
5 the counterparties is—

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

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

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

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

17 “(f) REPORTING AND RECORDKEEPING.—

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

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

22 “(B) for which

23 “(i) there is a Prudential Regulator shall keep books and records of

1 all activities related to its business as a swap dealer or major swap
2 participant in such form and manner and for such period as may be
3 prescribed by the Commission by rule or regulation;

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

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

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

14 “(g) DAILY TRADING RECORDS.—

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

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

22 “(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap
23 participant shall maintain daily trading records for each customer or counterparty in such

1 manner and form as to be identifiable with each swap transaction.

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

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

10 “(h) BUSINESS CONDUCT STANDARDS.—

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

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

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

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

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

20 “(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements
21 adopted by the Commission shall—

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

1 eligible contract participant;

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

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

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

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

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

17 “(3) RULES.—The Commission and the Securities and Exchange Commission, in
18 consultation with the appropriate Federal banking agencies, shall jointly prescribe rules
19 under this subsection governing business conduct standards for swap dealers, major swap
20 participants, security-based swap dealers, and major security-based swap participants
21 within 365 days of the enactment of the Over-the-Counter Derivatives Markets Act of
22 2009.

23 “(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

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

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

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

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

14 “(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap
15 participant shall disclose to the Commission and to the Prudential Regulator for such
16 swap dealer or major swap participant, as applicable, information concerning—

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

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

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

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

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

23 “(A) establish and enforce internal systems and procedures to obtain any

1 necessary information to perform any of the functions described in this section;
2 and

3 “(B) provide the information to the Commission and to the Prudential
4 Regulator for such swap dealer or major swap participant, as applicable, upon
5 request.

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

8 “(A) establish structural and institutional safeguards to assure that the
9 activities of any person within the firm relating to research or analysis of the price
10 or market for any commodity are separated by appropriate informational
11 partitions within the firm from the review, pressure, or oversight of those whose
12 involvement in trading or clearing activities might potentially bias their judgment
13 or supervision; and

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

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

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

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

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

23 **SEC. 718. CONFLICTS OF INTEREST.**

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

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

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

4 “(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission
5 merchants and introducing brokers implement conflict-of-interest systems and procedures that—

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

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

12 **SEC. 719. ALTERNATIVE SWAP EXECUTION FACILITIES.**

13 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by inserting after section
14 5g the following:

15 **“SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.**

16 “(a) REGISTRATION.—

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

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

23 “(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is

1 registered under subsection (a) may trade any swap.

2 “(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market
3 shall, to the extent that the board of trade also operates an alternative swap execution facility and
4 uses the same electronic trade execution system for trading on the contract market and the
5 alternative swap execution facility, identify whether the electronic trading is taking place on the
6 contract market or the alternative swap execution facility.

7 “(d) CRITERIA FOR REGISTRATION.—

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

11 “(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and
12 enforce trading and participation rules that will deter abuses and have the capacity to
13 detect, investigate, and enforce those rules, including means to—

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

16 “(B) use means to—

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

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

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

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

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

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

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

16 “(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution
17 facility shall permit trading only in swaps that are not readily susceptible to manipulation.

18 “(4) MONITORING OF TRADING.—The swap execution facility shall monitor
19 trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery
20 or cash settlement process through surveillance, compliance, and disciplinary practices
21 and procedures, including methods for conducting real-time monitoring of trading and
22 comprehensive and accurate trade reconstructions.

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

1 “(A) establish and enforce rules that will allow the facility to obtain any
2 necessary information to perform any of the functions described in this
3 subsection;

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

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

7 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

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

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

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

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

23 “(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall

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

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

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

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

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

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

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

19 “(12) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

1 facility; and

2 “(ii) shall—

3 “(I) review compliance with the core principles in section
4 5h(e).

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

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

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

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

20 “(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually
21 prepare and sign a report on the compliance of the facility with the commodity
22 laws and its policies and procedures, including its code of ethics and conflict of
23 interest policies, in accordance with rules prescribed by the Commission. Such

1 compliance report shall accompany the financial reports of the facility that are
2 required to be furnished to the Commission pursuant to this section and shall
3 include a certification that, under penalty of law, the report is accurate and
4 complete.

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

10 “(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-
11 Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange
12 Commission shall jointly prescribe rules governing the regulation of alternative swap execution
13 facilities under this section and section 3B of the Securities Exchange Act of 1934 (15 U.S.C.
14 78c-2).”.

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

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

18 **SEC. 721. DESIGNATED CONTRACT MARKETS.**

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

21 “(9) EXECUTION OF TRANSACTIONS.—

22 “(A) The board of trade shall provide a competitive, open, and efficient
23 market and mechanism for executing transactions that protects the price discovery

1 process of trading in the board of trade’s centralized market.

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

3 “(i) transfer trades or office trades;

4 “(ii) an exchange of

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

7 “(II) futures for cash commodities; or

8 “(III) futures for swaps; or

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

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

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

21 “(20) SYSTEM SAFEGUARDS.—The board of trade shall—

22 “(A) establish and maintain a program of risk analysis and oversight to
23 identify and minimize sources of operational risk through the development of

1 appropriate controls and procedures, and the development of automated systems,
2 that are reliable, secure, and give adequate scalable capacity;

3 “(B) establish and maintain emergency procedures, backup facilities, and a
4 plan for disaster recovery that allow for the timely recovery and resumption of
5 operations and the fulfillment of the board of trade’s responsibilities and
6 obligations; and

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

11 **SEC. 722. MARGIN.**

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

14 **SEC. 723. POSITION LIMITS.**

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

16 (1) inserting “(1)” after “(a),”;

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

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

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

1 significant price discovery function with respect to regulated markets,”; and

2 (5) inserting at the end the following:

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

8 “(A) contracts listed by designated contract markets;

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

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

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

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

22 “(B) ARBITRAGE.—The extent to which the price for the swap is
23 sufficiently related to the price of another contract traded on a regulated market

1 based upon the same underlying commodity so as to permit market participants to
2 effectively arbitrage between the markets by simultaneously maintaining positions
3 or executing trades in the swaps on a frequent and recurring basis;

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

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

11 “(E) OTHER MATERIAL FACTORS.—Such other material factors as the
12 Commission specifies by rule or regulation as relevant to determine whether a
13 swap serves a significant price discovery function with respect to a regulated
14 market.

15 “(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt,
16 conditionally or unconditionally, any person or class of persons, any swap or class of
17 swaps, or any transaction or class of transactions from any requirement it may establish
18 under this section with respect to position limits.”.

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

20 (1) in paragraph (1), by striking “or derivatives transaction execution facility or
21 facilities or electronic trading facility” and inserting “or alternative swap execution
22 facility or facilities”; and

23 (2) in paragraph (2), by striking “or derivatives transaction execution facility or

1 facilities or electronic trading facility” and inserting “or alternative swap execution
2 facility”.

3 **SEC. 724. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.**

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

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

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

11 (1) in paragraph (1), by striking “5a(d) and 5b(c)(2)” and inserting “5b(c)(2) and
12 5h(e)”; and

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

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

16 “(B) Unless section 805(e) of the Payment, Clearing, and Settlement
17 Supervision Act of 2009 applies, the new contract or instrument or clearing of the
18 new contract or instrument, new rule, or rule amendment shall become effective,
19 pursuant to the registered entity’s certification, 10 business days after the
20 Commission’s receipt of the certification (or such shorter period determined by
21 the Commission by rule or regulation) unless the Commission notifies the
22 registered entity within such time that it is staying the certification because there
23 exist novel or complex issues that require additional time to analyze, an

1 inadequate explanation by the submitting registered entity, or a potential
2 inconsistency with this Act (including regulations under this Act).

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

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

8 **SEC. 725. FOREIGN BOARDS OF TRADE.**

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

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

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

23 “(2) LINKED CONTRACTS.— It shall be unlawful for a foreign board of trade to

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

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

11 “(B) the foreign board of trade (or the foreign futures authority that
12 oversees the foreign board of trade)—

13 “(i) adopts position limits (including related hedge exemption
14 provisions) for the agreement, contract, or transaction that are comparable
15 to the position limits (including related hedge exemption provisions)
16 adopted by the registered entity for the 1 or more contracts against which
17 the agreement, contract, or transaction traded on the foreign board of trade
18 settles;

19 “(ii) has the authority to require or direct market participants to
20 limit, reduce, or liquidate any position the foreign board of trade (or the
21 foreign futures authority that oversees the foreign board of trade)
22 determines to be necessary to prevent or reduce the threat of price
23 manipulation, excessive speculation as described in section 4a, price

1 distortion, or disruption of delivery or the cash settlement process;

2 “(iii) agrees to promptly notify the Commission, with regard to the
3 agreement, contract, or transaction that settles against any price (including
4 the daily or final settlement price) of 1 or more contracts listed for trading
5 on a registered entity, of any change regarding—

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

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

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

14 “(IV) any other area of interest expressed by the
15 Commission to the foreign board of trade or foreign futures
16 authority;

17 “(iv) provides information to the Commission regarding large
18 trader positions in the agreement, contract, or transaction that is
19 comparable to the large trader position information collected by the
20 Commission for the 1 or more contracts against which the agreement,
21 contract, or transaction traded on the foreign board of trade settles; and

22 “(v) provides the Commission with information necessary to
23 publish reports on aggregate trader positions for the agreement, contract,

1 or transaction traded on the foreign board of trade that are comparable to
2 such reports on aggregate trader positions for the 1 or more contracts
3 against which the agreement, contract, or transaction traded on the foreign
4 board of trade settles.

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

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

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

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

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

16 “(f) A person registered with the Commission, or exempt from registration by the
17 Commission, under this Act may not be found to have violated subsection (a) with
18 respect to a transaction in, or in connection with, a contract of sale of a commodity for
19 future delivery if the person has reason to believe that the transaction and the contract is
20 made on or subject to the rules of a foreign board of trade that has complied with
21 subsections (b)(1) and (b)(2).”.

22 (d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the
23 Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

1 “(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract
2 of sale of a commodity for future delivery traded or executed on or through the facilities
3 of a board of trade, exchange, or market located outside the United States for purposes of
4 section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract
5 shall not be entitled to rescind or recover any payment made with respect to the contract,
6 based on the failure of the foreign board of trade to comply with any provision of this
7 Act.” .

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

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

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

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

18 “(B) No agreement, contract, or transaction between eligible contract
19 participants or persons reasonably believed to be eligible contract participants
20 shall be void, voidable, or unenforceable, and no party thereto shall be entitled to
21 rescind, or recover any payment made with respect to, such agreement, contract,
22 or transaction under this section or any other provision of Federal or State law,
23 based solely on the failure of the agreement, contract, or transaction to meet the

1 definition of a swap set forth in section 1a or to be cleared pursuant to section
2 2(j)(1).”.

3 **SEC. 727. MULTILATERAL CLEARING ORGANIZATIONS.**

4 (a) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of
5 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,
6 or exempted under section 2(h) or 4(c) of such Act” and inserting “section 2(c) or 2(f) of such
7 Act”;

8 (b) Section 408 of the Federal Deposit Insurance Corporation Improvement Act of 1991
9 (12 U.S.C. 4421) is further amended by inserting at the end the following:

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

13 **SEC. 728. PRIMARY ENFORCEMENT AUTHORITY.**

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

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

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

20 “(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive
21 authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act
22 with respect to banks, and branches or agencies of foreign banks that are swap dealers or major
23 swap participants.

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

8 “(d) BACKSTOP ENFORCEMENT AUTHORITY. —If the Commission does not initiate an
9 enforcement proceeding before the end of the 90 day period beginning on the date on which the
10 Commission receives a recommendation under subsection (c), the Prudential Regulator may
11 initiate an enforcement proceeding as permitted under Federal law.”.

12 **SEC. 729. ENFORCEMENT.**

13 (a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by
14 striking “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section
15 5a(g),” and inserting “or swap,”; and

16 (b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by
17 striking “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section
18 5a(g),” and inserting “or swap,”;

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

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

23 (e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by

1 inserting “swap repository,” before “or futures association”;

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

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

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

14 **SEC. 730. RETAIL COMMODITY TRANSACTIONS.**

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

16 (1) in paragraph (1), by striking “(to the extent provided in section 5a(g), 5b, 5d,
17 or 12(e)(2)(B))” and inserting “5b, or 12(e)(2)(B))”;

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

19 “(D) RETAIL COMMODITY TRANSACTIONS.—

20 “(i) This subparagraph shall apply to any agreement, contract, or
21 transaction in any commodity that is—

22 “(I) entered into with, or offered to (even if not entered into
23 with), a person that is not an eligible contract participant or eligible

1 commercial entity; and

2 “(II) entered into, or offered (even if not entered into), on a
3 leveraged or margined basis, or financed by the offeror, the
4 counterparty, or a person acting in concert with the offeror or
5 counterparty on a similar basis.

6 “(ii) Clause (i) shall not apply to—

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

11 “(II) any security;

12 “(III) a contract of sale that—

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

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

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

1 Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

2 “(V) an identified banking product, as defined in section
3 402(b) of the Legal Certainty for Bank Products Act of 2000 (7
4 U.S.C. 27(b)).

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

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

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

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

22 **SEC. 731. LARGE SWAP TRADER REPORTING.**

23 The Commodity Exchange Act (7 U.S.C. 1, *et seq.*) is amended by adding after section 4s

1 (as added by section 717) the following:

2 **“SEC. 4t. LARGE SWAP TRADER REPORTING.**

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

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

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

11 “unless such person files or causes to be filed with the properly designated officer of the
12 Commission such reports regarding any transactions or positions described in paragraphs (1) and
13 (2) as the Commission may by rule or regulation require and unless, in accordance with the rules
14 and regulations of the Commission, such person shall keep books and records of all such swaps
15 and any transactions and positions in any related commodity traded on or subject to the rules of
16 any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale
17 commitments of, such a commodity.

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

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

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

1 or indirectly controlled by such person.

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

5 **SEC. 732. OTHER AUTHORITY.**

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

9 **SEC. 733. ANTITRUST.**

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

15 **SEC. 734. EFFECTIVE DATE.**

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

17 **Subtitle B—Regulation of Security-Based Swap Markets**

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

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

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

23 (2) in paragraph (10), by inserting “security-based swap,” after “security future,”;

1 (3) in paragraph (13), by adding at the end the following:

2 “For security-based swaps, such terms include the execution, termination (prior to
3 its scheduled maturity date), assignment, exchange, or similar transfer or
4 conveyance of, or extinguishing of rights or obligations under, a security-based
5 swap, as the context may require.”;

6 (4) in paragraph (14), by adding at the end the following:

7 “For security-based swaps, such terms include the execution, termination (prior to
8 its scheduled maturity date), assignment, exchange, or similar transfer or
9 conveyance of, or extinguishing of rights or obligations under, a security-based
10 swap, as the context may require.”;

11 (5) in paragraph (39)—

12 (A) by striking “or government securities dealer” and adding “government
13 securities dealer, security-based swap dealer or major security-based swap
14 participant” in its place in subparagraph (B)(i)(I);

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

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

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

22 (6) by adding at the end the following:

23 “(65) ELIGIBLE CONTRACT PARTICIPANT.—The term ‘eligible contract participant’

1 has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C.
2 1a(13)).

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

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

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

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

12 “(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR
13 SECURITY-BASED SWAP PARTICIPANT.—The term ‘person associated with a security-
14 based swap dealer or major security-based swap participant’ or ‘associated person of a
15 security-based swap dealer or major security-based swap participant’ has the same
16 meaning as in section 1a(48) of the Commodity Exchange Act (7 U.S.C. 1a(48)).

17 “(71) SECURITY-BASED SWAP DEALER.—The term ‘security-based swap dealer’
18 has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C.
19 1a(44)).

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

23 “(73) BOARD.—The term ‘Board’ means the Board of Governors of the Federal

1 Reserve System.

2 “(74) PRUDENTIAL REGULATOR.—The term ‘Prudential Regulator’ has the same
3 meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

4 “(75) SWAP DEALER.—The term ‘swap dealer’ has the same meaning as in section
5 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

6 ”(76) SECURITY-BASED SWAP AGREEMENT.—

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

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

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

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

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

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

22 (2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

23 (A) in subsection (a)—

1 (i) by inserting “(including security-based swaps)” after
2 “securities”; and
3 (ii) by striking “206B of the Gramm-Leach-Bliley Act” and
4 inserting “3(a)(76) of the Securities Exchange Act of 1934”; and
5 (B) in subsection (d), by striking “206B of the Gramm-Leach-Bliley Act”
6 and inserting “3(a)(76) of the Securities Exchange Act of 1934”.

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

9 (1) Section 3A (15 U.S.C. 78c-1) is amended by striking “(as defined in section
10 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

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

13 “(2) To effect, alone or with one or more other persons, a series of transactions in
14 any security registered on a national securities exchange or in connection with any
15 security-based swap with respect to such security creating actual or apparent active
16 trading in such security, or raising or depressing the price of such security, for the
17 purpose of inducing the purchase or sale of such security by others.

18 “(3) If a dealer, broker, security-based swap dealer, major security-based swap
19 participant or other person selling or offering for sale or purchasing or offering to
20 purchase the security to induce the purchase or sale of any security registered on a
21 national securities exchange or any security-based swap with respect to such security by
22 the circulation or dissemination in the ordinary course of business of information to the
23 effect that the price of any such security will or is likely to rise or fall because of market

1 operations of any one or more persons conducted for the purpose of raising or depressing
2 the price of such security.

3 “(4) If a dealer, broker, security-based swap dealer, major security-based swap
4 participant or other person selling or offering for sale or purchasing or offering to
5 purchase the security, to make, regarding any security registered on a national securities
6 exchange or any security-based swap with respect to such security, for the purpose of
7 inducing the purchase or sale of such security or such security-based swap, any statement
8 which was at the time and in the light of the circumstances under which it was made,
9 false or misleading with respect to any material fact, and which he knew or had
10 reasonable ground to believe was so false or misleading.

11 “(5) For a consideration, received directly or indirectly from a dealer, broker,
12 security-based swap dealer, major security-based swap participant or other person selling
13 or offering for sale or purchasing or offering to purchase the security, to induce the
14 purchase of any security registered on a national securities exchange or any security-
15 based swap with respect to such security by the circulation or dissemination of
16 information to the effect that the price of any such security will or is likely to rise or fall
17 because of the market operations of any one or more persons conducted for the purpose
18 of raising or depressing the price of such security.”.

19 (3) Section 10 (15 U.S.C. 78j) is amended by striking “(as defined in section
20 206B of the Gramm-Leach-Bliley Act)” each place that the term appears;

21 (4) Section 15(c)(1) is amended—

22 (A) in subparagraph (A, by striking “, or any security-based swap
23 agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),”; and

1 (B) in subparagraphs (B) and (C), by striking “agreement (as defined in
2 section 206B of the Gramm-Leach-Bliley Act)” in each place that the term
3 appears;

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

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

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

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

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

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

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

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

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

20 (A) in subsection (a)(1), by striking “(as defined in section 206B of the
21 Gramm-Leach-Bliley Act)” and,
22

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

25 **SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.**

1 (a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15
2 U.S.C. 78a, *et seq.*) is amended by adding the following section after section 3:

3 **“SEC. 3A. CLEARING FOR SECURITY-BASED SWAPS.**

4 “(a) CLEARING REQUIREMENT.—

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

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

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

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

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

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

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

1 “(ii) the volume of transactions in the security-based swap;

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

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

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

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

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

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

23 “(6) TRANSITION RULES.—Rules adopted by the Commission under this section

1 shall provide for the reporting of data, as follows:

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

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

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

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

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

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

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

21 or

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

23 “(i) is not a security-based swap dealer or a major security-based

1 swap participant; and

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

4 “(9) VOLUNTARY REGISTRATION.—

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

8 “(B) DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may
9 clear swaps that are required to be cleared by a person who is registered as a
10 derivatives clearing organization under the Commodity Exchange Act (7 U.S.C.
11 1, *et seq.*).

12 “(10) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person
13 that is required to be registered as a clearing agency under this section shall register with
14 the Commission regardless of whether the person is also a bank or a derivatives clearing
15 organization registered with the Commodity Futures Trading Commission under the
16 Commodity Exchange Act (7 U.S.C. 1, *et seq.*).

17 “(b) REPORTING.—

18 “(1) IN GENERAL.—A clearing agency that clears security-based swaps shall
19 provide to the Commission all information determined by the Commission to be
20 necessary to perform its responsibilities under this Act. The Commission shall adopt data
21 collection and maintenance requirements for security-based swaps cleared by clearing
22 agencies that are comparable to the corresponding requirements for security-based swaps
23 accepted by security-based swap repositories and security-based swaps traded on

1 alternative swap execution facilities. The Commission shall share such information,
2 upon request, with the Board, the Commodity Futures Trading Commission, the
3 appropriate Federal banking agencies, the Financial Services Oversight Council, and the
4 Department of Justice or to other persons the Commission deems appropriate, including
5 foreign financial supervisors (including foreign futures authorities), foreign central banks,
6 and foreign ministries.

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

11 “(c) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

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

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

22 “(D) ensure compliance with securities laws and the rules and regulations
23 issued thereunder, including rules prescribed by the Commission pursuant to this

1 section.

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

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

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

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

23 (b) ALTERNATIVE SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934

1 (15 U.S.C. 78a, *et seq.*) is amended by adding after section 3A the following:

2 **“SEC. 3B. ALTERNATIVE SWAP EXECUTION FACILITIES.**

3 “(a) REGISTRATION.—

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

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

11 “(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is
12 registered under subsection (a) may trade any security-based swap.

13 “(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also
14 operates an alternative swap execution facility and uses the same electronic trade execution
15 system for trading on the exchange and the alternative swap execution facility, identify whether
16 the electronic trading is taking place on the exchange or the alternative swap execution facility.

17 “(d) CRITERIA FOR REGISTRATION.—

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

21 “(2) DETERRENCE OF ABUSES.—The swap execution facility shall establish and
22 enforce trading and participation rules that will deter abuses and have the capacity to
23 detect, investigate, and enforce those rules, including means to—

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

3 “(B) use means to—

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

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

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

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

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

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

22 “(2) COMPLIANCE WITH RULES.—The swap execution facility shall monitor and
23 enforce compliance with any of the rules of the facility, including the terms and

1 conditions of the security-based swaps traded on or through the facility and any
2 limitations on access to the facility.

3 “(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The
4 swap execution facility shall permit trading only in security-based swaps that are not
5 readily susceptible to manipulation.

6 “(4) MONITORING OF TRADING.—The swap execution facility shall monitor
7 trading in security-based swaps to prevent manipulation and price distortion through
8 surveillance, compliance, and disciplinary practices and procedures, including methods
9 for conducting real-time monitoring of trading and comprehensive and accurate trade
10 reconstructions.

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

12 “(A) establish and enforce rules that will allow the facility to obtain any
13 necessary information to perform any of the functions described in this
14 subsection;

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

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

18 “(6) POSITION LIMITS OR ACCOUNTABILITY.—

19 “(A) To reduce the potential threat of market manipulation or congestion,
20 the swap execution facility shall adopt for each of its contracts, where necessary
21 and appropriate, position limitations or position accountability.

22 “(B) For any contract that is subject to a position limitation established by
23 the Commission pursuant to section 10B, the swap execution facility shall set its

1 position limitation at a level no higher than the Commission limitation.

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

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

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

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

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

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

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

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

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

5 “(12) DESIGNATION OF COMPLIANCE OFFICER.—

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

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

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

11 “(ii) shall—

12 “(I) review compliance with the core principles in section
13 3B(e).

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

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

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

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

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

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

20 “(g) HARMONIZATION OF RULES.—Within 180 days of the enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading
22 Commission shall jointly prescribe rules governing the regulation of alternative swap execution
23 facilities under this section and section 5h of the Commodity Exchange Act (7 U.S.C. 7b-3).”.

1 (c) TRADING IN SECURITY-BASED SWAP AGREEMENTS.—Section 6 of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

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

7 (d) REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP
8 PARTICIPANTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended by
9 inserting after section 15E (15 U.S.C. 78o-7) the following:

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

13 “(a) REGISTRATION.—

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

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

19 “(b) REQUIREMENTS.—

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

23 “(2) CONTENTS.—The application shall be made in such form and manner as

1 prescribed by the Commission, giving any information and facts as the Commission may
2 deem necessary concerning the business in which the applicant is or will be engaged.
3 Such person, when registered as a security-based swap dealer or major security-based
4 swap participant, shall continue to report and furnish to the Commission such information
5 pertaining to such person's business as the Commission may require.

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

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

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

20 “(c) DUAL REGISTRATION.—

21 “(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be
22 registered as a security-based swap dealer under this section shall register with the
23 Commission regardless of whether that person also is a bank or is registered with the

1 Commodity Futures Trading Commission as a swap dealer.

2 “(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required
3 to be registered as a major security-based swap participant under this section shall
4 register with the Commission regardless of whether that person also is a bank or is
5 registered with the Commodity Futures Trading Commission as a major swap participant.

6 “(d) JOINT RULES.—

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

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

20 “(e) CAPITAL AND MARGIN REQUIREMENTS.—

21 “(1) IN GENERAL.—

22 “(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED
23 SWAP PARTICIPANTS.—Each registered security-based swap dealer and major

1 security-based swap participant for which there is a Prudential Regulator shall
2 meet such minimum capital requirements and minimum initial and variation
3 margin requirements as the Prudential Regulators shall by rule or regulation
4 jointly prescribe to help ensure the safety and soundness of the security-based
5 swap dealer or major security-based swap participant.

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

14 “(2) JOINT RULES.—

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

21 “(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-
22 BASED SWAP PARTICIPANTS.—Within 180 days of the enactment of the Over-the-
23 Counter Derivatives Markets Act of 2009, the Commission and the Commodity

1 Futures Trading Commission, in consultation with the Prudential Regulators, shall
2 jointly adopt rules imposing capital and margin requirements under this
3 subsection for security-based swap dealers and major security-based swap
4 participants for which there is no Prudential Regulator.

5 “(3) CAPITAL.—

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

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

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

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

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

1 Regulators under this subsection.

2 “(4) MARGIN.—

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

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

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

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

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

22 “(f) REPORTING AND RECORDKEEPING.—

23 “(1) IN GENERAL.—Each registered security-based swap dealer and major

1 security-based swap participant—

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

5 “(B) for which—

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

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

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

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

21 “(g) DAILY TRADING RECORDS.—

22 “(1) IN GENERAL.—Each registered security-based swap dealer and major
23 security-based swap participant shall maintain daily trading records of its security-based

1 swaps and all related records (including related transactions) and recorded
2 communications including but not limited to electronic mail, instant messages, and
3 recordings of telephone calls, for such period as may be prescribed by the Commission
4 by rule or regulation.

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

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

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

14 “(5) RULES.—Not later than 1 year after the date of the enactment of the Over-
15 the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity
16 Futures Trading Commission, in consultation with the appropriate Federal banking
17 agencies, shall jointly adopt rules governing daily trading records for swap dealers, major
18 swap participants, security-based swap dealers, and major security-based swap
19 participants.

20 “(h) BUSINESS CONDUCT STANDARDS.—

21 “(1) IN GENERAL.—Each registered security-based swap dealer and major
22 security-based swap participant shall conform with business conduct standards as may be
23 prescribed by the Commission by rule or regulation addressing—

1 “(A) fraud, manipulation, and other abusive practices involving security-
2 based swaps (including security-based swaps that are offered but not entered
3 into);

4 “(B) diligent supervision of its business as a security-based swap dealer;

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

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

8 “(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements
9 adopted by the Commission shall—

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

13 “(B) require disclosure by the security-based swap dealer or major
14 security-based swap participant to any counterparty to the security-based swap
15 (other than a swap dealer, major swap participant, security-based swap dealer or
16 major security-based swap participant) of:

17 “(i) information about the material risks and characteristics of the
18 security-based swap;

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

23 “(iii) any other material incentives or conflicts of interest that the

1 security-based swap dealer or major security-based swap participant may
2 have in connection with the security-based swap; and

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

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

12 “(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

13 “(1) IN GENERAL.—Each registered security-based swap dealer and major
14 security-based swap participant shall conform with standards, as may be prescribed by
15 the Commission by rule or regulation, addressing timely and accurate confirmation,
16 processing, netting, documentation, and valuation of all security-based swaps.

17 “(2) RULES.—Within 365 days of the enactment of the Over-the-Counter
18 Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading
19 Commission, in consultation with the appropriate Federal banking agencies, shall jointly
20 adopt rules governing documentation and back office standards for swap dealers, major
21 swap participants, security-based swap dealers, and major security-based swap
22 participants.

23 “(j) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major

1 security-based swap participant at all times shall comply with the following requirements:

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

5 “(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or
6 major security-based swap participant shall disclose to the Commission and to the
7 Prudential Regulator for such security-based swap dealer or major security-based swap
8 participant, as applicable, information concerning—

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

10 “(B) security-based swap trading operations, mechanisms, and practices;

11 “(C) financial integrity protections relating to security-based swaps; and

12 “(D) other information relevant to its trading in security-based swaps.

13 “(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major
14 swap security-based participant shall—

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

18 “(B) provide the information to the Commission and to the Prudential
19 Regulator for such security-based swap dealer or major security-based swap
20 participant, as applicable, upon request.

21 “(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major
22 security-based swap participant shall implement conflict-of-interest systems and
23 procedures that—

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

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

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

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

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

14 “(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the
15 Prudential Regulators shall consult with each other prior to adopting any rules under the Over-
16 the-Counter Derivatives Markets Act of 2009.

17 “(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically
18 provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-
19 based swap dealer or a major security-based swap participant to permit any person associated
20 with a security-based swap dealer or a major security-based swap participant who is subject to a
21 statutory disqualification to effect or be involved in effecting security-based swaps on behalf of
22 such security-based swap dealer or major security-based swap participant, if such security-based
23 swap dealer or major security-based swap participant knew, or in the exercise of reasonable care

1 should have known, of such statutory disqualification.

2 “(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

3 “(1) PRIMARY ENFORCEMENT AUTHORITY.—

4 “(A) SEC.—Except as provided in subsection (b), the Commission shall
5 have primary authority to enforce the provisions of Subtitle B of the Over-the-
6 Counter Derivatives Market Act of 2009 with respect to any person.

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

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

21 “(D) BACKSTOP ENFORCEMENT AUTHORITY. —If the Commission does not
22 initiate an enforcement proceeding before the end of the 90 day period beginning
23 on the date on which the Commission receives a recommendation under

1 subparagraph (C), the Prudential Regulator may initiate an enforcement
2 proceeding as permitted under Federal law.

3 “(2) The Commission, by order, shall censure, place limitations on the activities,
4 functions, or operations of, or reject the filing of any security-based swap dealer or major
5 security-based swap participant that has registered with the Commission pursuant to
6 subsection (b) if it finds, on the record after notice and opportunity for hearing, that such
7 censure, placing of limitations, or rejection is in the public interest and that such security-
8 based swap dealer or major security-based swap participant, or any person associated
9 with such security-based swap dealer or major security-based swap participant effecting
10 or involved in effecting transactions in security-based swaps on behalf of such security-
11 based swap dealer or major security-based swap participant, whether prior or subsequent
12 to becoming so associated—

13 “(A) has committed or omitted any act, or is subject to an order or finding,
14 enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

15 “(B) has been convicted of any offense specified in subparagraph (B) of
16 such paragraph (4) within 10 years of the commencement of the proceedings
17 under this subsection;

18 “(C) is enjoined from any action, conduct, or practice specified in
19 subparagraph (C) of such paragraph (4);

20 “(D) is subject to an order or a final order specified in subparagraph (F) or
21 (H), respectively, of such paragraph (4); or

22 “(E) has been found by a foreign financial regulatory authority to have
23 committed or omitted any act, or violated any foreign statute or regulation,

1 enumerated in subparagraph (G) of such paragraph (4).

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

13 “(A) has committed or omitted any act, or is subject to an order or finding,
14 enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

15 “(B) has been convicted of any offense specified in subparagraph (B) of
16 such paragraph (4) within 10 years of the commencement of the proceedings
17 under this subsection;

18 “(C) is enjoined from any action, conduct, or practice specified in
19 subparagraph (C) of such paragraph (4);

20 “(D) is subject to an order or a final order specified in subparagraph (F) or
21 (H), respectively, of such paragraph (4); or

22 “(E) has been found by a foreign financial regulatory authority to have
23 committed or omitted any act, or violated any foreign statute or regulation,

1 enumerated in subparagraph (G) of such paragraph (4).

2 “(4) It shall be unlawful—

3 “(A) for any person as to whom an order under paragraph (3) is in effect,
4 without the consent of the Commission, willfully to become, or to be, associated
5 with a security-based swap dealer or major security-based swap participant in
6 contravention of such order; or

7 “(B) for any security-based swap dealer or major security-based swap
8 participant to permit such a person, without the consent of the Commission, to
9 become or remain a person associated with the security-based swap dealer or
10 major security-based swap participant in contravention of such order, if such
11 security-based swap dealer or major security-based swap participant knew, or in
12 the exercise of reasonable care should have known, of such order.”.

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

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

16 “(1) any transaction in connection with any security whereby any party to such
17 transaction acquires (A) any put, call, straddle, or other option or privilege of buying the
18 security from or selling the security to another without being bound to do so; (B) any
19 security futures product on the security; or (C) any security-based swap involving the
20 security or the issuer of the security; or

21 “(2) any transaction in connection with any security with relation to which he has,
22 directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege;
23 (B) such security futures product; or (C) such security-based swap; or

1 “(3) any transaction in any security for the account of any person who he has
2 reason to believe has, and who actually has, directly or indirectly, any interest in any (A)
3 such put, call, straddle, option, or privilege; (B) such security futures product with
4 relation to such security; or (C) any security-based swap involving such security or the
5 issuer of such security.”.

6 (f) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE
7 CONDUCT IN SECURITY-BASED SWAPS.—

8 Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding
9 at the end the following:

10 “(i) It shall be unlawful for any person, directly or indirectly, by the use of any means or
11 instrumentality of interstate commerce or of the mails, or of any facility of any national securities
12 exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of,
13 any security-based swap, in connection with which such person engages in any fraudulent,
14 deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any
15 transaction, practice, or course of business which operates as a fraud or deceit upon any person.
16 The Commission shall, for the purposes of this paragraph, by rules and regulations define, and
17 prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of
18 business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.”.

19 (g) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAP S.—

20 The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j-
21 1) the following new section:

22 **“SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR**
23 **SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.**

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

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

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

9 “(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or
10 unconditionally exempt any person or class of persons, any security-based swap or class of
11 security-based swaps, or any transaction or class of transactions from any requirement it may
12 establish under this section with respect to position limits.

13 “(c) SRO RULES.—As a means reasonably designed to prevent fraud or manipulation, the
14 Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for
15 the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a
16 self-regulatory organization:

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

22 “(2) to adopt rules reasonably designed to ensure compliance with requirements
23 prescribed by the Commission under paragraph (a).”.

1 “(d) LARGE SECURITY-BASED SWAP TRADER REPORTING.—

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

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

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

11 “unless such person files or causes to be filed with the properly designated officer of the
12 Commission such reports regarding any transactions or positions described in
13 subparagraphs (A) and (B) as the Commission may by rule or regulation require and
14 unless, in accordance with the rules and regulations of the Commission, such person shall
15 keep books and records of all such security-based swaps and any transactions and
16 positions in any related security traded on or subject to the rules of any national securities
17 exchange, and of purchase and sale commitments of, such a security.

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

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

22 “(4) For the purpose of this subsection, the security-based swaps, and securities
23 transactions and positions of any person shall include such security-based swaps,

1 transactions and positions of any persons directly or indirectly controlled by such person.

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

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

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

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

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

21 “(5) OTHER MATERIAL FACTORS.—Such other material factors as the Commission
22 specifies by rule or regulation as relevant to determine whether a security-based swap
23 serves a significant price discovery function with respect to a regulated market.

1 (h) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—

2 Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the
3 end the following:

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

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

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

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

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

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

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

18 “(n) SECURITY-BASED SWAP REPOSITORIES.—

19 “(1) REGISTRATION REQUIREMENT.—

20 “(A) IN GENERAL.—It shall be unlawful for a security-based swap
21 repository, unless registered with the Commission, directly or indirectly to make
22 use of the mails or any means or instrumentality of interstate commerce to
23 perform the functions of a security-based swap repository.

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

4 “(2) STANDARD SETTING.—

5 “(A) DATA IDENTIFICATION.—The Commission shall prescribe standards
6 that specify the data elements for each security-based swap that shall be collected
7 and maintained by each security-based swap repository.

8 “(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall
9 prescribe data collection and data maintenance standards for security-based swap
10 repositories.

11 “(C) COMPARABILITY.—The standards prescribed by the Commission
12 under this subsection shall be comparable to the data standards imposed by the
13 Commission on clearing agencies that clear security-based swaps.

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

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

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

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

23 “(D) make available, on a confidential basis, all data obtained by the

1 security-based swap repository, including individual counterparty trade and
2 position data, to the Commission, the appropriate Federal banking agencies, the
3 Commodity Futures Trading Commission, the Financial Services Oversight
4 Council, and the Department of Justice or to other persons the Commission deems
5 appropriate, including foreign financial supervisors (including foreign futures
6 authorities), foreign central banks, and foreign ministries.

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

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

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

1 **SEC. 754. REPORTING AND RECORDKEEPING.**

2 (a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) is amended by inserting
3 after section 13 the following section:

4 **“SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-**
5 **BASED SWAPS.**

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

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

8 “(2) did not have data regarding the security-based swap accepted by a security-
9 based swap repository in accordance with rules adopted by the Commission under section
10 13(n),

11 shall meet the requirements in subsection (b).

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

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

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

22 “(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall
23 require persons described in subsection (a) to report the same or more comprehensive data than

1 the Commission requires security-based swap repositories to collect under subsection (n).”.

2 (b) BENEFICIAL OWNERSHIP REPORTING.—

3 (1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C.
4 78m(d)(1)) is amended by inserting “or otherwise becomes or is deemed to become a
5 beneficial owner of any of the foregoing upon the purchase or sale of a security-based
6 swap or other derivative instrument that the Commission may define by rule, and” after
7 “Alaska Native Claims Settlement Act,”; and

8 (2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C.
9 78m(g)(1)) is amended by inserting “or otherwise becomes or is deemed to become a
10 beneficial owner of any security of a class described in subsection (d)(1) upon the
11 purchase or sale of a security-based swap or other derivative instrument that the
12 Commission may define by rule” after “subsection (d)(1) of this section”.

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

18 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities
19 Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

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

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

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

4 **SEC. 755. STATE GAMING AND BUCKET SHOP LAWS.**

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

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

1 distribution of securities shall apply to any transaction in a security-based swap or a security
2 futures product, except that this sentence shall not be construed as limiting any State antifraud
3 law of general applicability.”.

4 **SEC. 756. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF**
5 **SECURITY-BASED SWAPS.**

6 (a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is
7 amended—

8 (1) in paragraph (1), by inserting “security-based swap,” after “security future,”;

9 (2) in paragraph (3) by adding at the end the following:

10 “Any offer or sale of a security-based swap by or on behalf of the issuer of the securities
11 upon which such security-based swap is based or is referenced, an affiliate of the issuer,
12 or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to
13 sell such securities,”; and

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

15 “(17) The terms “swap” and “security-based swap” have the same meanings as
16 provided in sections 1a(35) and (38) of the Commodity Exchange Act (7 U.S.C. 1a(35)
17 and (38)).

18 “(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to
19 mean the execution, termination (prior to its scheduled maturity date), assignment,
20 exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations
21 under, a security-based swap, as the context may require.”.

22 (b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933
23 (15 U.S.C. 77e) is amended by adding at the end the following:

1 “(d) Notwithstanding the provisions of section 3 or section 4, unless a registration
2 statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-
3 based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means
4 or instruments of transportation or communication in interstate commerce or of the mails to offer
5 to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible
6 contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C.
7 1a(13)).”.

8 **SEC. 757. OTHER AUTHORITY.**

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

12 **SEC. 758. JURISDICTION.**

13 Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by
14 adding at the end the following new subsection:

15 “(c) DERIVATIVES.—The Commission shall not have the authority to grant exemptions
16 from the security-based swap provisions of the Over-the-Counter Derivatives Market Act of
17 2009, except as expressly authorized under the provisions of that Act.”.