

1. Page 599, line 3: strike “).” and insert “, including any modification of the meanings under Section 721(b) of this Act.”
2. Page 599: strike lines 5-18 and insert the following:
“(a) Consultation.—
“(1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the Prudential Regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.
“(2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the Prudential Regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.”
3. Page 599, line 25: strike “paragraph (1)” and insert “paragraphs (1) and (2)”
4. Page 601, lines 12-20: strike all
5. Page 604, lines 1 and 15: strike “advertising and”
6. Page 606, line 22 through Page 607, line 17: strike all and resequence subsequent subsections
7. Page 607, line 18: strike “DEFINITIONS.” and insert “JOINT RULEMAKING.—(1)”
8. Page 607, line 21: insert ““(A)” after “to”
9. Page 607, line 25: strike the period and insert the following:
“;(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.”

Page 608, after line 16, insert the following:

“(h) RULES AND REGISTRATION BEFORE FINAL EFFECTIVE DATES.—Beginning on the date of enactment of this Act and regardless of the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act.

Provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.”

Page 608, line 17-Page 609, line 2: strike all and insert the following

“SEC. 713. PORTFOLIO MARGING CONFORMING CHANGES

“(a) Add a new subparagraph (C) to section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3)) as follows:

“(C) (i) Notwithstanding any provision of sections 2(a)(1)(C)(i) or 4d(a)(2) of the Commodity Exchange Act and the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 36 of this title or pursuant to a rule or regulation, cash and securities may be held by a broker or dealer registered pursuant to section 15(b)(1) of this title and also registered as a futures commission merchant pursuant to section 4f(a)(1) of the Commodity Exchange Act, in a portfolio margining account carried as a futures account subject to section 4d of the Commodity Exchange Act and the rules and regulations thereunder, pursuant to a portfolio margining program approved by the Commodity Futures Trading Commission, and subject to subchapter IV of chapter 7 of title 11 of the United States Code and the rules and regulations thereunder. The Commission shall consult with the Commodity Futures Trading Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products.”

(b) Add a new subsection (h) to section 4d of the Commodity Exchange Act (7 U.S.C. 6d) as follows:

“(h) Notwithstanding subsection (a)(2) or the rules and regulations thereunder, and pursuant to an exemption granted by the Commission under section 4(c) of this Act or pursuant to a rule or regulation, a futures commission merchant that is registered pursuant to section

4f(a)(1) of this Act and also registered as a broker or dealer pursuant to section 15(b)(1) of the Securities Exchange Act of 1934 may, pursuant to a portfolio margining program approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934, hold in a portfolio margining account carried as a securities account subject to section 15(c)(3) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, a contract for the purchase or sale of a commodity for future delivery or an option on such a contract, and any money, securities or other property received from a customer to margin, guarantee or secure such a contract, or accruing to a customer as the result of such a contract. The Commission shall consult with the Securities and Exchange Commission to adopt rules to ensure that such transactions and accounts are subject to comparable requirements to the extent practical for similar products”

(c) Amend section 20 of the Commodity Exchange Act (7 U.S.C. 24) by adding at the end a new paragraph (c) to read as follows:

“(c) The Commission shall exercise its authority to ensure that securities held in a portfolio margining account carried as a futures account are customer property and the owners of those accounts are customers for the purposes of subchapter IV of chapter 7 of title 11 of the United States Code.”

10. Page 621, line 21: at the end insert the following:

“SEC. 719. STUDIES

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

- (A) commercial users and traders of derivatives;
- (B) derivative clearing houses, exchanges and electronic trading platforms;
- (C) trade repositories and regulator investigations of market activities; and
- (D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) INTERNATIONAL SWAP REGULATION.—(1) In General.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

- (A) relating to—
 - (i) swap regulation in the United States, Asia, and Europe; and
 - (ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and
- (B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized

(2) Report.—Not later than 18 months after the date of enactment of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

- (A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) STABLE VALUE CONTRACTS.—(1) DETERMINATION.—

(A) STATUS.— No later than 15 months after the enactment of this act, the United States Securities and Exchange Commission and the United States Commodity Futures Trading Commission jointly shall conduct a study to determine whether stable value contracts falls within the definition of a swap. In making this determination, the Commissions jointly may consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) REGULATIONS. — If the Commissions determine that stable value contracts fall within the definition of a swap, the Commissions jointly shall determine if an exemption from the definition of swap is appropriate and in the public interest for stable value contracts. Until such determination, the requirements of this Title shall not apply to stable value contracts.

(C) LEGAL CERTAINTY.—Stable value contracts in effect prior to a determination in subparagraph (B) shall not be considered swaps.

(2) DEFINITION.— For the purposes of this subsection, “stable value contract” means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in a defined contribution plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974), an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) that is maintained by an eligible employer described in section 457(e)(1)(A) of such Code, an arrangement described in section 403(b) of such Code, or a qualified tuition program (as defined in section 529 of such Code).

SEC. 720. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the two agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section,

negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information."

11. Page 622, strike lines 9 through 12 and insert the following:

“(2) APPROPRIATE FEDERAL BANKING AGENCY.—For purposes of this title, the term ‘appropriate Federal banking agency’—

“(A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C.1813); and

“(B) is the Board in the case of a noninsured State bank.”

12. Page 622, line 24 through Page 623, line 13: strike all and insert the following:

“‘part’ means a person who is associated with a swap dealer or major swap participant as a partner, officer, employee or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves—

“(i) the solicitation or acceptance of swaps; or

“(ii) the supervision of any person or persons so engaged.

13. Page 636, lines 10-22: strike all and insert “excluding positions held for hedging or mitigating commercial risk; or”

14. Page 637, lines 3-8: strike all from “entity,” through “goods,” and insert “entity that is highly leveraged relative to the amount of capital it holds and that is not subject to capital requirements established by an appropriate Federal banking regulator; and”

15. Page 637, line 20: at the end insert the following:

“In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps and may take into consideration the value and quality of collateral held against counterparty exposures.”

16. Page 638, line 7 through Page 639, line 15: strike all and insert the following:

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

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

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

“(iii) any foreign bank which does not operate an insured branch; or

“(iv) any organization operating under section 25A of the Federal Reserve Act or having an agreement with the Board under section 225 of the Federal Reserve Act;

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

“(i) a national bank;

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

“(iii) any Federal savings association;

“(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—
“(i) a State-chartered bank that is not a member of the Federal Reserve System; or
“(ii) any State savings association;”

17. Page 639, line 21: before the period insert the following: “; and
“(E) the Federal Housing Finance Agency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a regulated entity (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992”

18. Page 646, line 10: insert “(1)” after “(a)”

19. Page 646, line 17: insert “(11)” after “(a)”

20. Page 647, lines 5-7: strike all after “based” and insert “swap”

21. Page 648, line 1-16: strike all

22. Page 648, line 17 through Page 651, line 11: strike all

23. Page 651, lines 14-17: strike all and insert “lects and maintains information or records with respect to transactions or positions in, or the terms and conditions or, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.”

24. Page 652, lines 1-3: strike all and insert the following:
““(iii) regularly enters into swaps with counterparties as an ordinary course of business for its own account; or”

25. Page 652, line 15: strike “buys or sells” and insert “enters into”

26. Page 652, line 18: at the end insert the following:
““(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.”

27. Page 652, line 21, strike “multiple”

28. Page 652, lines 23 & 24, strike “that are open to multiple participants”

29. Page 653, line 1, strike “trading” and insert “electronic trade execution or voice brokerage”

30. Page 658, line 3: after “section 5” insert “or a swap execution facility pursuant to section 5h”

31. Page 659, line 16 through Page 661 line 13: strike all and insert the following:

“(e) FERC.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

“(G)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission or a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) with respect to an agreement, contract, or transaction that is entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission or a State regulatory authority and is—

“(I) not executed, traded, or cleared on a registered entity or trading facility; or

“(II) executed, traded, or cleared on a registered entity or trading facility owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).

“(ii) In addition to the authority of the Federal Energy Regulatory Commission or a State regulatory authority described in clause (i), nothing in this subparagraph shall limit or affect—

“(I) any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i); or

“(II) the jurisdiction of the Commission under subparagraph (A) with respect to an agreement, contract, or transaction that is executed, traded, or cleared on a registered entity or trading facility that is not owned or operated by a regional transmission organization or independent system operator (as defined by sections 3(27) and (28) of the Federal Power Act (16 U.S.C. 796(27), 796(28)).”

32. Page 662, line 14: at end insert the following:

“(d) Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Wall Street Transparency and Accountability Act of 2010.

33. Page 663, line 25 through Page 681, line 8: strike all and insert the following:

“(1) IN GENERAL.—

“(A) Standard for clearing.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(iii) that the swap is required to be cleared.

“(B) Open access.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

“(i) prescribe that all swaps (but not contracts for future delivery or options on such contracts) submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

“(ii) provide for non-discriminatory clearing of a swap (but not a contract for future delivery or option on such contract) executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

“(2) Commission review.—

“(A) Commission-initiated review.—

“(i) The Commission on an ongoing basis shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

“(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

“(B) Swap submissions.—

“(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

“(ii) Any swap or group, category, type or class of swaps listed for clearing by a derivative clearing organization as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(iii) The Commission shall—

“(I) make available to the public submissions received under clauses (i) and (ii);

“(II) review each submission made under clauses (i) and (ii), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

“(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

“(C) Deadline.—The Commission shall make its determination under subparagraph (B)(iii) not later than 90 days after receiving a submission made under subparagraphs (B)(i) and (B)(ii), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

“(D) Determination.—

“(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2).

“(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

“(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

“(IV) The effect on competition, including appropriate fees and charges applied to clearing.

“(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

“(iii) In making a determination under subparagraph (B)(iii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(E) Rules.—Not later than 1 year after the date of the enactment of the this subsection, the Commission shall adopt rules for a derivatives clearing organization’s submission for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing. Nothing in this subparagraph limits the Commission from making a determination under subparagraph (B)(iii) for swaps described in subparagraph (B)(ii).

“(F) Effect on Authority.—Nothing in this paragraph shall authorize the Commission to require a derivatives clearing organization to list for clearing, a swap, group, category, type or class of swaps.

“(3) Stay of clearing requirement.—

“(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

“(B) Deadline.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

“(C) Determination.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

“(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

“(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

“(D) Rules.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization’s clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

“(4) Prevention of evasion.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

“(5) Reporting transition rules.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

“(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

“(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

“(i) 90 days after such effective date; or

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

“(6) Clearing transition rules.—

“(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(A).

“(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (5)(B).

“(7) Exceptions.—

“(A) In general.—The requirements of paragraph (1)(A) shall not apply to a swap if one of the counterparties to the swap—

“(i) is not a financial entity;

“(ii) is using swaps to hedge or mitigate commercial risk, including operating and balance sheet risk; and

“(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared swaps.

“(B) Abuse of exception.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

“(C) Option to clear.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

“(D)(i) Financial Entity Definition.—For the purposes of this paragraph, a financial entity is defined as—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

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

“(V) a commodity pool;

“(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

“(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(VIII) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956.

“(ii) Exclusion.— The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including

“(I) depository institutions with total assets of \$10,000,000,000 or less;

“(II) farm credit system institutions with total assets of \$10,000,000,000 or less;

or

“(III) credit unions with total assets of \$10,000,000,000 or less.

“(E) Treatment of Affiliates.—“(i) IN GENERAL.—An affiliate of a person that qualifies for an exception under subparagraph (A) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in clause (i) shall not apply if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

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

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

“(VI) a commodity pool; or

“(VII) a bank holding company with over \$50,000,000,000 in consolidated assets; or

“(F) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this paragraph. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this paragraph.

“(8) TRADE EXECUTION.—

“(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

“(i) execute the transaction on a board of trade designated as a contract market under section 5; or

“(ii) execute the transaction on a swap execution facility registered under 5h or a swap execution facility that is exempt from registration under section 5h(f) of this Act.

“(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or for swap transactions subject to the clearing exception under paragraph (7).”

34. Page 681, line 12: strike “AUDIT” and insert “BY BOARD after “APPROVAL”

35. Page 681, line 14: strike “trade” and insert “execute”

36. Page 681, line 20-21: strike “the issuer’s audit committee” and insert “an appropriate committee of the issuer’s board or governing body”

37. Page 685, line 12: strike “a swap customer” and insert “swap customers”

38. Page 685, lines 15-16: strike “1 or more” and insert “account or”

39. Page 686, lines 12-13: strike “customer” and insert “customers”

40. Page 686, line 15: strike “as provided in this section” and insert “in customer accounts”

41. Page 693, lines 3-12: strike all, resequence subsequently added subsections

42. Page 694, line 9. at the end insert the following:

“(3) The Securities and Exchange Commission shall make available to the Commission, upon request, all information determined to be relevant by the Securities and Exchange Commission regarding a clearing agency deemed to be registered with the Commission under paragraph (1).”

43. Page 700, line 1: strike “and” and insert “or”

44. Page 710, line 23: strike “support the objectives” and insert “permit the consideration of the views”

45. Page 712, lines 12-16: strike all and add “.” at end of line 11

46. Page 714, lines 1-2: strike “3(a)(78) of the Securities Exchange Act” and insert “1a(47)(A)(v)”

47. Page 714, line 3: strike “make available” and insert “open to inspection and examination”

48. Page 717, line 22: at the end insert “1a(47)(A)(v) of the Commodity Exchange Act and section”

49. Page 719, line 9: at the end, insert the following:

“(h) REDUCING CLEARING SYSTEMIC RISK.—Section 5b(f)(1) of the Commodity Exchange Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

“In order to minimize systemic risk, under no circumstances shall a derivatives clearing organization be compelled to accept the counterparty credit risk of another clearing organization.”

50. Page 720, line 24: insert “, including price and volume,” after “transaction”

51. Page 725, lines 15-16: strike all and insert the following:

“(i) the requirements and core principles described in this section; and”

52. Page 726, line 2: strike “subsection” and insert “section”

53. Page 726, line 17 through Page 727, line 3: strike all

54. Page 730, lines 2-3: strike all and insert “data repository with respect to the requirements and core principles described in this section;”

55. Page 739, lines 13-14: strike “security-based swap agreements” and insert “swaps”
56. Page 739, lines 15-16: strike “3(a)(78) of the Securities Exchange Act of 1934” and insert “1a(47)(A)(v)”
57. Page 741, line 21: strike “(c), (e), and (f),” and insert “(d) and (e)”
58. Page 741, lines 22 and 23: strike “non-bank”
59. Page 743, lines 19-21: strike all and insert “to prescribe rules as directed under this section.”
60. Page 743, line 25 and Page 744, lines 13-14: strike “DEPOSITORY INSTITUTIONS” and insert “BANKS”
61. Page 744, lines 2-5: strike “that is a depository institution, as that term is defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813),” and insert “for which there is a Prudential Regulator”
62. Page 744, lines 15-18: strike “that is not a depository institution, as that term is defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813),” and insert “for which there is not a Prudential Regulator”
63. Page 744, lines 7-8: strike “appropriate Federal banking agency” and insert “Prudential Regulator”
64. Page 744, line 9-11: strike “to help ensure the safety and soundness of the swap dealer or major swap participant”
65. Page 744, line 20-21: strike “and the Securities and Exchange Commission”
66. Page 744, line 23-24: strike “to help ensure the safety and soundness of the swap dealer or major swap participant”
67. Page 745, lines 1 through Page 747, line 16: strike all and insert the following:
 - “(A) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE BANKS.—The Prudential Regulators, in consultation with the Commission and the Securities and Exchange Commission, shall jointly adopt rules for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a Prudential Regulator imposing—
 - “(i) capital requirements; and
 - “(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.
 - “(B) SWAP DEALERS AND MAJOR SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for swap dealers and major swap participants, with respect to their

activities as a swap dealer or major swap participant, for which there is not a Prudential Regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization.

“(3) STANDARDS FOR CAPITAL & MARGIN.—

“(A) To offset the greater risk to the swap dealer or major swap participant and the financial system arising from the use of swaps that are not cleared, the requirements imposed under paragraph (2) shall —

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

“(ii) be appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.”

68. Page 747, line 17: strike “(D)” and insert “(B)”

69. Page 748, line 25 through Page 750, line 2: strike all

70. Page 750, line 3: strike “(5)” and insert “(C)”

71. Page 750, lines 4-5: strike “appropriate Federal banking agency” and insert “Prudential Regulator”

72. Page 750, line 9: strike “may” and insert “shall”

73. Page 750, line 10: strike “agency” and insert “Regulator”

74. Page 750, line 16: strike “(6)” and insert “(D)”

75. Page 750, lines 18-19: strike “appropriate Federal banking agencies” and insert “Prudential Regulators”

76. Page 751, line 10 through Page 752, line 4: strike all

77. Page 753, line 4: strike the period and insert the following: “;

“(D) shall keep any such books and records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

78. [Page 754, strike line 8 through page 758 line 9 and insert the following:

“(h) Business Conduct Standards-

“(1) IN GENERAL- Each registered swap dealer and major swap participant shall conform with such business conduct standards as prescribed in subparagraph (3) and as may be prescribed by the Commission by rule or regulation that relate to--

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

- `(B) diligent supervision of the business of the registered swap dealer and major swap participant;
- `(C) adherence to all applicable position limits; and
- `(D) such other matters as the Commission determines to be appropriate.

`(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES-

- `(A) A swap dealer or major swap participant that acts as an advisor to special entity regarding a swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.
- (B) A swap dealer that enters into or offers to enter into swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.
- `(C) SPECIAL ENTITY DEFINED- For purposes of this subsection, the term “special entity” means—
 - (i) a Federal agency;
 - (ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;
 - (ii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
 - (iii) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
 - (iv) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

`(3) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission shall--

- `(A) establish a duty for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;
- `(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of--
 - `(i) information about the material risks and characteristics of the swap;
 - `(ii) any material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and
 - `(iii)(I) for cleared swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and
 - `(II) for uncleared swaps, receipt of the daily mark of the transaction from the swap dealer or the major swap participant;
- `(C) establish a duty for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

Comment [.1]: Do we need a time? Prior to entering into a transaction? Prior to finalizing a transaction?

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

(4) SPECIAL REQUIREMENTS FOR SWAP DEALERS ACTING AS ADVISORS—

(i) IN GENERAL.—It shall be unlawful for a swap dealer or major swap participant—

(I) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(III) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(ii) Any swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(iii) Any swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any swap recommended by the swap dealer is in the best interests of the Special Entity, including information relating to—

(I) the financial status of the Special Entity;

(II) the tax status of the Special Entity;

(III) the investment or financing objectives of the Special Entity;

and

(IV) any other information that the Commission may prescribe by rule or regulation.

(5) SPECIAL REQUIREMENTS FOR SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES—

(i) Any swap dealer or major swap participant that offers to or enters into a swap with a Special Entity shall—

(I) comply with any duty established by the Commission for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the swap dealer or major swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that--

(aa) has sufficient knowledge to evaluate the transaction and risks;

(bb) is not subject to a statutory disqualification;

(cc) is independent of the swap dealer or major swap participant;

(dd) undertakes a duty to act in the best interests of the counterparty it represents;

(ee) makes appropriate disclosures;

(ff) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and

(gg) in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(II) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the swap dealer is acting; and

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

(6) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants.

(7) This section shall not apply with respect to a transaction that is

(A) initiated by a Special Entity on an exchange or swap execution facility and

(B) the swap dealer or major swap participant does not know the identity of the counterparty to the transaction.”

79. Page 758, lines 10 and 19: strike “AND BACK OFFICE”

80. Page 761, line 11: at the end insert ““(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of swap dealers and major swap participants.”

81. Page 765, line 1 through Page 767, line 19: strike all and insert the following:
“Each futures commission merchant shall designate an individual to serve as its Chief Compliance Officer and perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission or rules to be adopted by a futures association registered under section 17.”

82. Page 768, line 12: strike “A” insert ““(1) IN GENERAL—Except as specified in paragraph (2), a”

83. Page 768, line 15: strike “1” and insert “A”

84. Page 768, line 16: strike “2” and insert “B”

85. Page 768, line 16: at the end insert the following:

“(2) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.”

86. Page 773, line 4: after “shall” insert “(i)”

87. Page 773, line 6: strike “limitation.” and insert “limitation; and (ii) monitor positions established on or thought the swap execution facility for compliance with the limit set by; the Commission and the limit, if any, set by the swap execution facility.”

88. Page 773, lines 7-16: strike all

89. Page 774, line 16: after “capture” insert “and transmit”

90. Page 775, line 6: strike the period and insert the following: “; (iii) shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

91. Page 781, line 12: at the end insert the following:

“(c)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

“(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.”

92. Page 791, line 17: strike “basis.” and insert “basis. (22) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

“(23) SEC.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.”

93. Page 793, line 15 through Page 796, line 13: strike all and insert the following:

“(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of

sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

“(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

“(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

“(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

“(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

“(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

“(B) to the maximum extent practicable, in its discretion—

“(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

“(ii) to deter and prevent market manipulation, squeezes, and corners;

“(iii) to ensure sufficient market liquidity for bona fide hedgers; and

“(iv) to ensure that the price discovery function of the underlying market is not disrupted.

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

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

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

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

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

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

“(5) ECONOMICALLY EQUIVALENT CONTRACTS.—

“(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than

bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

“(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

“(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

“(ii) establish the limits simultaneously with limits established under paragraph (2).

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

“(A) contracts listed by designated contract markets;

“(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

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

“(7) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.”.

94. Page 796, line 24: at the end insert the following:

“(c) Section 4a(c) of such Act is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding after and below the end the following:

“(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

“(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

“(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

“(iii) arises from the potential change in the value of—

“(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

“(II) liabilities that a person owns or anticipates incurring;

or

“(III) services that a person provides, purchases, or anticipates providing or purchasing; or
“(B) reduces risks attendant to a position resulting from a swap that—
“(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or
“(ii) meets the requirements of subparagraph (A).”.

(d) This section shall become effective on the date of its enactment.”

95. Page 798, lines 2-3: strike “It shall be unlawful for” and insert “The Commission may not permit”

96. Page 802, line 10: insert “(1)” before “A”

97. Page 802, line 15, strike “person” and insert “person—“(A)”

98. Page 802, lines 17-18: strike all after “that” and insert the following: “is—
“(i) legally organized under the laws of a foreign country;
“(ii) authorized to act as a board of trade by a foreign futures authority; and
“(iii) subject to regulation by the foreign futures authority; and

“(B) has not been determined by the Commission to be operating in violation of subsection (a).

“(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).”.

99. Page 804, line 5: strike “an” and insert “such”

100. Page 804, line 20 through Page 805, line 2: strike all, resequence subsequent subparagraphs

101. Page 805, lines 3-16: strike every instance of “bilateral trading agreement” and replace with “swap”

Page 806, lines 12-25: strike all and insert the following:

“(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

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

102. Page 807, line 11: strike “shall” and insert “may”

103. Page 812, line 5: after “organization,” insert “clearing agency,”

104. Page 812, line 6: after “repository,” insert “security-based swap data repository, security-based swap execution facility,”
105. Page 814, line 13: insert “(other than section 5a” after ““““”
106. Page 815, line 22: insert “longer” after “other”
107. Page 817, lines 11-16: strike all
108. Page 819, line 5: strike “A” and insert ““(I) Except as provided in subclause (II), a”
109. Page 819, line 17: at the end insert the following:
““(II) With regard to persons described in subparagraph (B)(i)(II) for which a Federal regulatory agency has issued a proposed rule concerning agreements, contracts, or transactions in foreign currency described in subparagraph (B)(i)(I) prior to the date of enactment of this subclause, subclause (I) shall take effect 90 days after the date of enactment of this subclause.
110. Page 821, line 9, strike “shall have jurisdiction to” and insert “may”
111. Page 822, line 3-4: strike all and insert the following:
“(b) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a-2) is amended by striking subsection (c) and inserting the following:
“(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—”” (all subsequent paragraphs, subparagraphs and clauses through Page 827 need and quotations marks)
112. Page 822, line 21: after “entity” insert “and notice of such certification to its members (in a manner to be determined by the Commission)”
113. Page 823, line 25: at the end insert the following:
“(C) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in subparagraph (A), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.”
114. Page 825, line 11: strike “subtitle” and insert “Act”
115. Page 834, line 13, insert “civil” before “judicial”
116. Page 834, line 20, Page 835, line 20, Page 836, line 5, Page 841, line 16: insert “covered” after “any”
117. Page 834, line 21: strike “action” and insert “action,”

118. Page 835, lines 21-22, Page 836, lines 5-6, Page 841, lines 17-18: strike “brought by the Commission under the Act”
119. Page 837, lines 1 and 5: strike “actions” and insert “action”
120. Page 840, line 9, strike “APPEALS” and insert “JUDICIAL REVIEW”
121. Page 840, lines 15-16, strike “may be appealed to the appropriate court of appeals of the United States” and insert “shall be subject to judicial review in an appropriate United States district court”
122. Page 840, line 16: strike “court of appeals of the United States” and insert “United States district court”
123. Page 840: strike lines 19-21.
124. Page 841, line 16, insert “covered” before “judicial”.
125. Page 841, lines 17-18, strike “brought by the Commission under this Act”.
126. Page 846, line 10 through Page 847, line 8: strike all and insert the following:

“(A) IN GENERAL.- Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (C). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.”
127. Page 847, line 9: strike “iii” and insert “B”
128. Page 847, line 16: strike “(B)” and insert “(C)”
129. Page 847, line 19, Page 848, line 24, strike “and privileged”
130. Page 850, lines 16-17, strike “and shall be subject to prosecution under section 1001 of title 18, United States Code”
131. Page 854, lines 1-3: strike all and insert the following:

“(i) Section 22 of the Commodity Exchange Act is amended—

 - (1) in subsection (a)(1)(B) by
 - (A) inserting ‘or any swap’ after ‘commodity’;
 - (B) inserting ‘or swap’ after ‘such contract’;
 - (2) in subsection (a)(1)(C) at the end insert “(iv) a swap; or”

- (3) in subsection (b)(1)(A) by striking “section 2(h)(7) or sections 5 through 5c” and inserting “sections 5, 5b, 5c, 5h, or 21”.

132. Page 858, lines 5-19: strike all and insert the following:

“(a) In order to promote effective and consistent global regulation swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

“(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.”

133. Page 859, line 14: after “2010” insert the following”

“provided no rule or regulation promulgated by the Commission shall (a) restrict any person’s hedging or risk management activities; (b) require any person to disclose nonpublic information that may be material to the market price, rate or level of the-swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, except as necessary to make any statement made to any other person in or in connection with the transaction not misleading in any material respect; or (c) duplicate the prohibitions in paragraph (3) below”

134. Page 861, line 2: at the end insert the following:

“(C) MISTAKES.- Mistakenly transmitting false or misleading or inaccurate information to a price reporting service would not be sufficient to violate subsection (c)(1)(A).

135. Page 867, line 6: strike “Court of Appeals” and insert “district court”

136. Page 867, lines 7 and 11: strike “circuit” and insert “district”

137. Page 868, line 7: strike “shall have jurisdiction to” and insert “may”

138. Page 868, line 9: strike the comma and all that follows through the word “conclusive” on lines 11-12

139. Page 868, line 25: insert “knowingly” before “fail”.

- 140. Page 869, line 1: strike “shall be guilty of a misdemeanor and”
- 141. Page 869, lines 4-5: strike “less than 6 months nor”.
- 142. Page 869, line 6: insert “knowing” before “failure”.
- 143. Page 869, line 8: strike “shall be guilty of a felony”
- 144. Page 869, lines 14-16: strike the last sentence of subsection (d)

145. Page 870, at the end insert the following:

“SEC. 754. CONFLICTS OF INTEREST.

(a) *Commodity Exchange Act*.--

(1) **DEFINITION OF RESTRICTED OWNER**.--Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(51) **RESTRICTED OWNER**.--The term ‘restricted owner’ means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.”.

(2) **CONFLICTS OF INTEREST**.--

(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end of such subparagraph the following: “The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.”.

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended--

(i) by striking “and” at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:

“(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and”.

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

“(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.”.

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

“(15) **CONFLICTS OF INTEREST.**--

“(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

“(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

“(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.”.

(b) *Securities Exchange Act of 1934.*--

(1) **DEFINITION OF RESTRICTED OWNER.**--Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

“(78) **RESTRICTED OWNER.**--The term ‘restricted owner’ has the same meaning as in section 1a(51) of the Commodity Exchange Act.”.

(2) **CONFLICTS OF INTEREST.**--

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

``The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended--

(i) in subparagraph (C), strike ``and"; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

``(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and".

(C) Section 6(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new paragraphs:

``(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

``(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

``(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

``(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that

such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

“(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.”

Page 871, lines 1-4: strike all and insert the following:

“SEC. 755. EFFECTIVE DATE.

Unless otherwise provided, the provisions of this subtitle shall become effective the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.”

146. Page 873, line 21 through Page 874, line 8: strike all and insert “Commission, excluding positions held for hedging or mitigating commercial risk;”

147. Page 874, line 18: after “holds” insert “and that is not subject to capital requirements established by an appropriate Federal banking regulator”

148. Page 875, line 7: at the end insert the following:
“In setting the definitions, the Commission shall consider the person’s relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.”

149. Page 875, line 23: after “is” insert “primarily based on (without reference to any interest rate payments that provide for the actual or imputed financing for the referenced security or loan)”

150. Page 877, line 23 through Page 878, line 12: strike all

151. Page 880, lines 5-7: strike all and insert the following:
“(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or”

152. Page 880, line 19 through Page 881, line 6: strike all and insert the following:
“(C) EXCEPTION.—The term “security-based swap dealer” does not include a person that enters into security-based swaps for such person’s own account, either individually or in a fiduciary capacity, but not as a part of regular business.
“(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based

swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of this determination to exempt.”

153. Page 881, lines 19-23: strike all after “that” and insert the following: “collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.”

154. Page 882, lines 4 and 5: before “swap” insert “security-based”

155. Page 882, line 6: strike “multiple”

156. Page 882, lines 8-9: strike “that are open to multiple participants”

157. Page 882, line 13: strike “designated contract market” and insert “national securities exchange”

158. Page 883, line 6: strike “define” and insert the following: “define—

(1) the term “commercial risk”;

(2) any other term included in an amendment to the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) made by this subtitle; and

(3) ”

159. Page 883, lines 14 through Page 884, line 2: strike all

160. Page 890, line 18 through Page 908, line 3: strike all and insert the following:

“(a) IN GENERAL.—

“(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(C)(ii) of subsection (b) that the security-based swap is required to be cleared.

“(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

“(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

“(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or security-based swap execution facility.

“(b) COMMISSION REVIEW.—

“(1) COMMISSION-INITIATED REVIEW.—

“(A) The Commission on an ongoing basis shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

“(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

“(2) SWAP SUBMISSIONS.—

“(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

“(B) Any security-based swap or group, category, type or class of security-based swaps listed for clearing by a clearing agency as of the date of enactment of this subsection shall be considered submitted to the Commission.

“(C) The Commission shall—

“(i) make available to the public any submission received under subparagraphs (A) and (B);

“(ii) review each submission made under subparagraphs (A) and (B), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

“(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

“(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(C) not later than 90 days after receiving a submission made under paragraphs (2)(A) and (2)(B), unless the submitting clearing agency agrees to an extension for the time limitation established under this paragraph.

“(4) DETERMINATION.—

“(A) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

“(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

“(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

“(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

“(iv) The effect on competition, including appropriate fees and charges applied to clearing.

“(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

“(B) In making a determination under paragraph (2)(C) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

“(5) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for a clearing agency’s submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing. Nothing in this paragraph limits the Commission from making a determination under paragraph (2)(C) for security-based swaps described in subparagraph (2)(B).

“(6) Effect on Authority.—Nothing in this paragraph shall authorize the Commission to require a clearing agency to list for clearing, a security-based swap, group, category, type or class of security-based swaps.

“(c) STAY OF CLEARING REQUIREMENT.—

“(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

“(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

“(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

“(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

“(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

“(4) RULES.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency’s clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

“(d) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.

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

“(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

“(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

“(A) 90 days after such effective date; or

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

“(f) CLEARING TRANSITION RULES.—

“(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (e)(1).

“(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt from the clearing requirements of this section if reported pursuant to subsection (e)(2).

“(g) EXCEPTIONS.—

“(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—

“(A) is not a financial entity;

“(B) is using security-based swaps to hedge or mitigate commercial risk, including operating and balance sheet risk; and

“(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

“(2) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

“(3) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion of the counterparty to the security-based swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).

“(4)(i) Financial Entity Definition.—For the purposes of this subsection, a financial entity is defined as—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

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

“(V) a commodity pool as defined in section 1a(10) of the Commodity Exchange

Act;

“(VI) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80-b-2(a));

“(VII) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

“(VIII) a person predominantly engaged in activities that are in the business of banking or financial in nature, as defined in Section 4(k) of the Bank Holding Company Act of 1956.

“(ii) Exclusion.— The Commission shall consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, including

“(I) depository institutions with total assets of \$10,000,000,000 or less;

“(II) farm credit system institutions with total assets of \$10,000,000,000 or less;

or

“(III) credit unions with total assets of \$10,000,000,000 or less.

“(5) Treatment of Affiliates.—“(A) IN GENERAL.—An affiliate of a person that qualifies for an exception under subsection (g) (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of

the person) may qualify for the exception only if the affiliate, acting on behalf of the person and as an agent, uses the security-based swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity.

“(B) PROHIBITION RELATING TO CERTAIN AFFILIATES.—The exception in subparagraph (A) shall not apply if the affiliate is—

- “(i) a swap dealer;
- “(ii) a security-based swap dealer;
- “(iii) a major swap participant;
- “(iv) a major security-based swap participant;
- “(v) an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for paragraph (1) or (7) of subsection (c) of that Act (15 U.S.C. 80a–3(c));
- “(vi) a commodity pool; or
- “(vii) a bank holding company with over \$50,000,000,000 in consolidated assets; or

“(6) ABUSE OF EXCEPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions described in this subsection. The Commission may also request information from those persons claiming the clearing exception as necessary to prevent abuse of the exceptions described in this subsection.

“(h) TRADE EXECUTION.—

“(1) IN GENERAL.—With respect to transactions involving security based swaps subject to the clearing requirement of subsection (a)(1), counterparties shall—

- “(A) execute the transaction on an exchange; or
- “(B) execute the transaction on a security-based swap execution facility registered under section 3D or a security-based swap execution facility that is exempt from registration under section 3D(e) of this Act.

“(B) EXCEPTION.—The requirements of subparagraphs (A) and (B) of paragraph (1) shall not apply if no exchange or security-based swap execution facility makes the security-based swap available to trade or for security-based swap transactions subject to the clearing exception under subsection (g).”

- 161. Page 908, line 4: strike “(b) AUDIT” and insert “(i) BOARD”
- 162. Page 908, line 5: strike “or trade” and insert “a security-based swap or execute”
- 163. Page 908, line 10-11: strike “the issuer’s audit committee” and insert “an appropriate committee of the issuer’s board or governing body”
- 164. Page 908, line 14: strike “(c)” and insert “(j)”
- 165. Page 910, line 3: strike “(a)” and insert “(e)”
- 166. Page 910, line 13: strike “(a)(8)” and insert “(h)”
- 167. Page 914, line 5: strike “(d)” and insert “(i)”

168. Page 917, line 21: strike ““(1) IN GENERAL.—“

169. Page 918, lines 9-24: strike all

170. Page 918, line 25: at the end insert the following:

“(l) Existing Depository Institutions and Derivative Clearing Organizations.—

“(1) IN GENERAL.—A depository institution or derivative clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act that is required to be registered as a clearing agency under this section is deemed to be registered under this section solely for the purpose of clearing security-based swaps to the extent that, before the date of enactment of this subsection—

“(A) the depository institution cleared security-based swaps as a multilateral clearing organization; or

“(B) the derivative clearing organization cleared securities-based swaps pursuant to an exemption from registration as a clearing agency.

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

“(3) The Commodity Futures Trading Commission shall make available to the Commission, upon request, all information determined to be relevant by the Commodity Futures Trading Commission regarding a derivatives clearing organization deemed to be registered with the Commission under paragraph (1).”

171. Page 919, line 1: strike “(l)” and insert “(m)”

172. Page 923, line 22 through Page 924, line 25: strike all, resequence subsequent paragraphs

173. Page 926, line 2: after “capture” insert “and transmit”

174. Page 928, lines 3-11: strike all and insert “resources exceeds the total amount that”

175. Page 936, line 11: strike “.” and insert the following:

“(f) SEGREGATION REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAPS –

“(1) Segregation of assets held as collateral in uncleared security-based swap transactions.–

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

“(B) Segregation and Maintenance of Funds.— At the request of a counterparty to a security-based swap that provides funds or other property to a security-based swap dealer or major security-based swap participant to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall –

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

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

“(2) APPLICABILITY – the requirements described in paragraph (1) shall –

“(A) apply only to a security-based swap between a counterparty and a security-based swap dealer or major security-based swap participant that is not submitted for clearing to a clearing agency;

“(B)(i) not apply to variation margin payments; or

“(ii) not preclude any commercial arrangement regarding –

“(I) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

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

“(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS – The segregated account described in paragraph (1) shall be –

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

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

“(4) REPORTING REQUIREMENT – If the counterparty does not choose to require segregation of the funds or other property supplied to margin, guarantee, or secure the obligations of the counterparty, the security-based swap dealer or major security-based swap participant shall report to the counterparty of the security-based swap dealer or major security-based swap participant on a quarterly basis that the back office procedures of the security-based swap dealer or major security-based swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

“(g) Bankruptcy.—A security-based swap as defined in section 3(a)(68) of the Securities Exchange Act shall be considered to be a security as such term is used in section 101(53A)(B) and subchapter III of title 11, United States Code. An account that holds a security-based swap, other than a portfolio margining account referred to in section 15(c)(3)(C) of the Securities Exchange Act of 1934 shall be considered to be a securities account as that term is defined in section 741 of title 11 of the United States Code. The definitions of the terms “purchase” and “sale” in section 3(a)(13) and (14) of the Securities Exchange Act shall be applied to the terms “purchase” and “sale” as used in section 741 of title 11, United States Code. The term “customer” as defined in section 741 of title 11, United States Code, excludes any person to the extent such person has a claim based on any open repurchase agreement, open reverse repurchase agreement, stock borrowed agreement, non-cleared option, or non-cleared security-based swap except to the extent of any margin delivered to or by the customer with respect to

which there is a customer protection requirement under section 15(c)(3) of the Securities Exchange Act or a segregation requirement.”.”

176. Page 943, line 9, insert “, including price and volume,” after “transaction”
177. Page 943, line 21, insert “, volume,” after “transaction
178. Page 944, line 10, strike “subsection”
179. Page 947, lines 7 and 8, strike “derivatives clearing organizations” and insert “clearing agencies”
180. Page 948, lines 5-6: after “the” insert the following: “requirements and”
181. Page 952, lines 15-16: strike all and insert “spect to the requirements and core principles described in this subsection;”
182. Page 958, line 8: strike “(c), (e), and (f),” and insert “(d) and (e)”
183. Page 958, lines 11 and 12: strike “non-bank”
184. Page 960, lines 8-11: strike all after “participants” and insert “for which there is a Prudential Regulator.”
185. Page 960, lines 14-18: strike all and insert “to prescribe rules as directed under this section.”
186. Page 961, lines 6-7: strike “appropriate Federal banking agency” and insert “Prudential Regulator”
187. Page 961, lines 8-10: strike “to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant”
188. Page 961, line 22-25: strike “to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant”
189. Page 962, line 2 through Page 964, line 22: strike all and insert the following:

“(A) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE BANKS.—The Prudential Regulators, in consultation with the Commission and the Commodity Futures Trading Commission, shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is a Prudential Regulator imposing—

 - “(i) capital requirements; and
 - “(ii) both initial and variation margin requirements on all security-based swaps that are not cleared by a registered clearing agency.

“(B) SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS THAT ARE NOT BANKS.—The Commission shall adopt rules for security-based swap dealers and major security-based swap participants, with respect to their activities as a swap dealer or major swap participant, for which there is not a Prudential Regulator imposing—

“(i) capital requirements; and

“(ii) both initial and variation margin requirements on all swaps that are not cleared by a registered clearing agency.

“(3) STANDARDS FOR CAPITAL & MARGIN.—

“(A) To offset the greater risk to the security-based swap dealer or major security-based swap participant and the financial system arising from the use of security-based swaps that are not cleared, the requirements imposed under paragraph (2) shall —

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

“(ii) be appropriate for the risk associated with the non-cleared security-based swaps held as a security-based swap dealer or major security-based swap participant.”

190. Page 964, line 17: strike “(D)” and insert “(B)”
191. Page 966, line 4 through Page 967, line 3: strike all
192. Page 967, line 4: strike “(5)” and insert “(C)”
193. Page 967, lines 5-6: strike “appropriate Federal banking agency” and insert “Prudential Regulator”
194. Page 967, line 11: strike “may and insert “shall”
195. Page 967, line 12: strike “agency” and insert “Regulator”
196. Page 967, line 18: strike “(6)” and insert “(D)”
197. Page 967, lines 21-22: strike “appropriate Federal banking agencies” and insert “Prudential Regulators”
198. Page 968, line 13 through Page 969, line 8: strike all
199. Page 971, line 19 through Page 976, line 6
“(h) Business Conduct Standards-
“(1) IN GENERAL- Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as prescribed in subparagraph (3) and as may be prescribed by the Commission by rule or regulation that relate to--
“(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

- `(B) diligent supervision of the business of the registered security-based swap dealer and major security-based swap participant;
- `(C) adherence to all applicable position limits; and
- `(D) such other matters as the Commission determines to be appropriate.

`(2) RESPONSIBILITIES WITH RESPECT TO SPECIAL ENTITIES-

`(A) A security-based swap dealer or major security-based swap participant that acts as an advisor to special entity regarding a security-based swap shall comply with the requirements of subparagraph (4) with respect to such Special Entity.

(B) A security-based swap dealer that enters into or offers to enter into security-based swap with a Special Entity shall comply with the requirements of subparagraph (5) with respect to such Special Entity.

`(C) SPECIAL ENTITY DEFINED- For purposes of this subsection, the term “special entity” means—

- (i) a Federal agency;
- (ii) a State, State agency, city, county, municipality, or other political subdivision of a State or;
- (iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);
- (iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or
- (v) any endowment, including an endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

`(3) BUSINESS CONDUCT REQUIREMENTS- Business conduct requirements adopted by the Commission shall--

`(A) establish a duty for a security-based swap dealer or major security-based swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

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

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

`(ii) any material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

`(iii)(I) for cleared security-based swaps, upon the request of the counterparty, receipt of the daily mark of the transaction from the appropriate derivatives clearing organization; and

`(ii)(II) for uncleared security-based swaps, receipt of the daily mark of the transaction from the security-based swap dealer or the major security-based swap participant;

`(C) establish a duty for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith; and

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

‘(4) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS ACTING AS ADVISORS—

‘(i) IN GENERAL.—It shall be unlawful for a security-based swap dealer or major security-based swap participant—

(I) to employ any device, scheme, or artifice to defraud any Special Entity or prospective customer who is a Special Entity;

(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any Special Entity or prospective customer who is a Special Entity; or

(III) to engage in any act, practice, or course of business that is fraudulent, deceptive or manipulative.

(ii) Any security-based swap dealer that acts as an advisor to a Special Entity shall have a duty to act in the best interests of the Special Entity.

(iii) Any security-based swap dealer that acts as an advisor to a Special Entity shall make reasonable efforts to obtain such information as is necessary to make a reasonable determination that any security-based swap recommended by the security-based swap dealer is in the best interests of the Special Entity, including information relating to—

(I) the financial status of the Special Entity;

(II) the tax status of the Special Entity;

(III) the investment or financing objectives of the Special Entity;

and

(IV) any other information that the Commission may prescribe by rule or regulation.

‘(5) SPECIAL REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AS COUNTERPARTIES TO SPECIAL ENTITIES—

‘(i) Any security-based swap dealer or major security-based swap participant that offers to or enters into a security-based swap with a Special Entity shall—

(I) comply with any duty established by the Commission for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(18) of this Act, that requires the security-based swap dealer or major security-based swap participant to have a reasonable basis to believe that the counterparty that is a Special Entity has an independent representative that--

‘(aa) has sufficient knowledge to evaluate the transaction and risks;

‘(bb) is not subject to a statutory disqualification;

`(cc) is independent of the security-based swap dealer or major security-based swap participant;
`(dd) undertakes a duty to act in the best interests of the counterparty it represents;
`(ee) makes appropriate disclosures;
`(ff) will provide written representations to the Special Entity regarding fair pricing and the appropriateness of the transaction; and
`(gg) in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, is a fiduciary as defined in section 3 of that Act (29 U.S.C. 1002); and

(II) before the initiation of the transaction, disclose to the Special Entity in writing the capacity in which the security-based swap dealer is acting; and

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

“(6) RULES- The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants.

“(7) This section shall not apply with respect to a transaction that is

(A) initiated by a Special Entity on an exchange or security-based swap execution facility and

(B) the security-based swap dealer or major security-based swap participant does not know the identity of the counterparty to the transaction.”

200. Page 976, lines 7 and 17: strike “AND BACK OFFICE”

201. Page 979, line 17: at the end, insert ““(7) RULES.—The Commission shall prescribe rules under this subsection governing duties of security-based swap dealers and major security-based swap participants.”

202. Page 990, line 11 strike “section 10B(n)” and insert “section 13(n)”

203. Page 1001, strike lines 8-12, and insert the following:

“(c) DERIVATIVES.—Unless the Commission is expressly authorized by any provision described in this subsection to grant exemptions, the Commission shall not grant exemptions, with respect to amendments made by subtitle B of the Wall Street Transparency and Accountability Act of 2010, with respect to paragraphs 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, and 79 of section 3(a), and sections 10B(a), 10B(b), 10B(c), 13A, 15F, 17A(g), 17A(h), 17A(i), 17A(j), 17A(k), and 17A(l); provided that the Commission shall have exemptive authority under this title with respect to security-based swaps as to the same matters that the Commodity Futures Trading Commission has under the Wall Street Transparency and Accountability Act of 2010 with respect to swaps, including under section 4(c) of the Commodity Exchange Act.”.

Page 1002, lines 7-10: strike all and insert the following:

“Unless otherwise provided, the provisions of this subtitle shall become effective the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.”