S. RES. 268

At the request of Mr. MENENDEZ, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. Res. 268, a resolution recognizing Hispanic Heritage Month and celebrating the heritage and culture of Latinos in the United States and their immense contributions to the Nation.

S. RES. 276

At the request of Mr. BURRIS, his name was added as a cosponsor of S. Res. 276, a resolution designating September 22, 2009, as ''National Falls Prevention Awareness Day''.

AMENDMENT NO. 2447

At the request of Mrs. HUTCHISON, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 2447 intended to be proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2454

At the request of Mr. VITTER, the names of the Senator from Alabama (Mr. SHELBY), the Senator from Oklahoma (Mr. INHOFE) and the Senator from Nebraska (Mr. JOHANNS) were added as cosponsors of amendment No. 2454 intended to be proposed to H. R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2455

At the request of Mr. VITTER, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of amendment No. 2455 intended to be proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2456

At the request of Mr. CARPER, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of amendment No. 2456 proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2460

At the request of Mrs. FEINSTEIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of amendment No. 2460 proposed to H.R. 2996, a bill making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REED:

S. 1691. A bill to comprehensively regulate derivatives markets to increase transparency and reduce risks in the financial system; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, today I introduce the Comprehensive Derivatives Regulation Act of 2009, or the CDRA, which establishes for the first time a comprehensive regulatory framework to prevent derivatives trading activities from ever again contributing to catastrophic failures in our financial system. One year ago this month our nation found itself on the verge of a total financial meltdown with decades-old financial institutions collapsing overnight and credit markets freezing up in large part because companies like AIG took huge and risky bets selling totally unregulated credit default swaps, bets that backfired when the housing bubble burst.

Derivatives are financial contracts that investors use to manage their risks or grow their portfolios. They are called derivatives because they derive their value from other things such as the price of corn at a future date, or whether a company fails to make good on its debts. While most derivatives offer companies the ability to better manage their risks, some irresponsible financial firms took huge risks in recent years using new, untested, and unregulated derivatives products. When these firms faltered, it sent shockwaves through our financial system and landed us in a recession. As a result, today families in Rhode Island and throughout the country struggle to keep their jobs and stay in their homes.

I have been working over the past year with my Senate colleagues to develop a series of critical reforms to the financial sector to ensure that we never face such a perilous situation again. As the Chairman of the Securities, Insurance, and Investment Subcommittee of the Senate Banking Committee, I have introduced bills to greatly strengthen oversight of credit rating agencies and hedge funds, which until now have been subject to relatively little regulation.

Introducing the CDRA is another key step in filling the huge regulatory gaps in our financial system. This bill would put in place a truly comprehensive framework for regulating all such products. Derivatives have been overseen by two market regulators, the Securities and Exchange Commission, SEC, which has broad responsibility for protecting investors and ensuring the integrity of securities markets, and the Commodity Futures Trading Commission, CFTC, which regulates commodity futures and the exchanges on which those products are traded.

In part because of this shared jurisdiction, large segments of the derivatives markets, such as credit default swaps, have gone entirely unsupervised by either agency. This bill will fill these regulatory gaps.

First, the bill would require standardized credit default swaps and other unregulated derivatives to be traded through a clearinghouse. This would protect the companies and the financial system from the risks posed by these instruments. Importantly, the bill also grants regulators the ability to oversee any new derivative product in the future, so dealers can no longer create products that fall into holes in the law.

Second, the bill establishes robust capital and margin requirements for derivatives dealers and other major market participants, and subjects them to higher standards for products that are not traded on clearinghouses.

Third, the bill subjects firms to new conduct requirements to protect investors from abusive practices in the market. It also includes new recordkeeping and reporting requirements to ensure that regulators and investors have broad information about derivatives transactions and positions throughout the financial sector.

Fourth, the bill combats fraud and manipulation in derivatives markets by giving regulators new authority to set position limits and oversee the marketing of products to certain investors. The bill strengthens thresholds in place to ensure only sophisticated investors are engaging in certain types of trading.

Finally, the bill rationalizes the sharing of jurisdiction between the SEC and CFTC, and establishes a process for quickly assigning responsibility for new products so they do not fall through the cracks. Specifically, the bill provides the SEC with jurisdiction over all derivatives that are securities or can be used as synthetic substitutes for securities, because without such authority over products that can affect securities markets, the SEC cannot accomplish its mission to protect investors and ensure the integrity and fairness of markets. The bill provides the CFTC with jurisdiction over all other derivatives. The bill also provides a fast and efficient process for the U.S. Court of Appeals for the District of Columbia Circuit to resolve any differences in views between the agencies that might arise.

I hope my colleagues will join me in improving the oversight of credit default swaps and other derivatives products by cosponsoring this legislation and supporting its passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1691

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Comprehensive Derivatives Regulation Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

Congress finds that—

(1) in recent years, the over-the-counter derivatives market has grown rapidly, but regulators have lacked key information and adequate authority to address systemic and other risks posed by unregulated derivatives trading;

(2) excessive risk taking among market participants, combined with limited regulatory oversight of such products, was a significant cause of the recent financial crisis;

(3) lack of transparency in the markets has contributed to market instability and uncertainty, and has resulted in a less efficient marketplace;

(4) customized derivative products provide key benefits to certain market participants and should be permitted under comprehensive regulation, but all derivatives activities should be accompanied by appropriate risk management and prudential standards; and

(5) the trading of derivatives on regulated exchanges should be encouraged because of the significant associated market efficiencies.

TITLE I—REGULATION OF SECURITY-BASED DERIVATIVES

SEC. 101. DEFINITIONS.

(a) DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (10), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (13), by adding at the end the following: ''For any security-based swap, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(3) in paragraph (14), by adding at the end the following: ''For any security-based swap, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''; and

(4) by adding at the end the following:

''(65) DERIVATIVE.—The term 'derivative' means—

''(A) any future, forward, swap, warrant, put, call, straddle, option, or privilege on or related to—

''(i) any security, or group or index of securities (including any interest therein or based on the value thereof); or

''(ii) any issuer of securities or group or index of issuers of securities (including any interest therein or based on the value thereof); and

''(B) any contract of sale for future delivery of any commodity (or option on such contract).

''(66) SWAP.—

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

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

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

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

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

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

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale for future delivery traded on or subject to the rules of any board of trade designated as a contract market under section 5 of the Commodity Exchange Act (7 U.S.C. 7)—

''(I) on a commodity other than a security; or

''(II) that is not based on or subject to the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to such contract;

''(ii) any sale of any cash commodity or security for deferred or delayed shipment or delivery;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based, in whole or in part, on the value thereof, whether physically or cash settled;

''(iv) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) relating to foreign currency;

''(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis, whether physically or cash settled;

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security (as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or paragraph (10) of this subsection);

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

''(I) based on, or references, a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11))) by the issuer of such security;

''(ix) any security future product (as defined in paragraph (56));

''(x) any hybrid instrument that is predominantly a banking product, as provided in section 405 of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455), or any hybrid instrument that is predominantly a security, as provided in section 2(f) of the Commodity Exchange Act (as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009);

''(xi) any agreement, contract, or transaction that is an insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation that is subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State; or

''(xii) any identified banking product specified in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act (15

U.S.C. 78c note), mortgage or mortgage purchase commitment, or any sale of installment loan contracts or receivables, if any such product or instrument is not marketed or sold as an alternative to a swap.

''(67) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' means—

''(A) acting for its own account—

''(i) a financial institution (as defined in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1(a)(15)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009);

''(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation, as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

''(iii) an investment company that is subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

''(iv) a commodity pool that—

''(I) has total net assets exceeding $5,000,000; and

''(II) is formed and operated by a person that is subject to regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

''(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

''(I) that has total net assets exceeding $10,000,000; or

''(II) that—

''(aa) has total net assets exceeding $5,000,000; and

''(bb) enters into an agreement, contract, or transaction in connection with the conduct of the business of the entity or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the business of the entity;

''(vi) an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function that is subject as such to foreign regulation—

''(I) that has total assets exceeding $5,000,000; or

''(II) the investment decisions of which are made by—

''(aa) an investment adviser or commodity trading advisor that is subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or the Commodity Exchange Act (7 U.S.C. 1 et seq.);

''(bb) a foreign person performing a similar role or function that is subject as such to foreign regulation;

''(cc) a financial institution (as defined in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1(a)(15)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009); or

''(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

''(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

''(II) a multinational or supranational government entity; or

''(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II),

except that such term does not include an entity, political subdivision, instrumentality, agency, or department referred to in subclause (I) or (III), unless the entity, political subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, provided that, with respect to any State or entity, political subdivision, agency, or department of a State, such amount is exclusive of any proceeds from any offering of municipal securities;

''(viii)(I) a broker or dealer that is subject to regulation under this title or a foreign person performing a similar role or function that is subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant, unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

''(II) an associated person of a registered broker or dealer concerning the financial or securities activities, of which, the registered person makes and keeps records under section 15C(b) or 17(h); and

''(III) an investment bank holding company (as defined in section 17(i));

''(ix) a futures commission merchant that is subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function that is subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant, unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

''(x) a floor broker or floor trader that is subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (as defined in section 1a(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29)), as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009, other than an electronic trading facility with respect to a significant price discovery contract), or an exempt board of trade operating under section 5d of the Commodity Exchange Act (7 U.S.C. 7a–3), or any affiliate thereof, on which such person regularly trades; or

''(xi) a natural person who—

''(I) owns and invests on a discretionary basis not less than $10,000,000;

''(II) owns and invests on a discretionary basis not less than $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual; or

''(III) is an officer or director of an entity (or a person performing similar functions) and who enters into the agreement, contract, or transaction in order to manage the risk associated with the securities of such entity owned by the individual at the time of entering into the agreement, contract, or transaction;

''(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

''(ii) an investment adviser that is subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.), a commodity trading advisor that is subject to regulation under the Commodity Exchange Act (7 U.S.C. 1 et seq.), a foreign person performing a similar role or function that is subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

''(C) any other person that the Commission determines by rule, jointly with the Commodity Futures Trading Commission, to be an eligible contract participant, in light of the financial or other qualifications of the person.

''(68) PERSON ASSOCIATED WITH A SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'person associated with a significant security-based derivatives market participant' or 'associated person of a significant security-based derivatives market participant' means—

''(i) any partner, officer, director, or branch manager of a significant security-based derivatives market participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a significant security-based derivatives market participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with a significant security-based derivatives market participant; and

''(iii) any employee of a significant security-based derivatives market participant.

''(B) EXCLUSION.—Other than for purposes of section 15F(e)(2), the term 'person associated with a significant commodity-based derivatives market participant' or 'associated person of a significant security-based derivatives market participant' does not include any person associated with a significant security-based derivatives market participant, the functions of which are solely clerical or ministerial.

''(69) SECURITY DERIVATIVE.—The term 'security derivative' means—

''(A) any derivative, other than a derivative instrument swap, on or related to—

''(i) any security, or group or index of securities (including any interest therein or based on the value thereof); or

''(ii) any issuer of securities or group or index of issuers of securities (including any interest therein or based on the value thereof); and

''(B) any security that the Commission by rule, regulation, or order determines is a security derivative.

''(70) SECURITY-BASED SWAP.—The term 'security-based swap' means a swap, of which a material term—

''(A) is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein, other than interest rate or currency;

''(B) is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing;

''(C) provides for the purchase or sale of 1 or more securities on a contingent basis, whether physically or cash settled, if such

agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction; or

''(D) allows for settlement of the swap by delivery of, or by reference to, any security.

''(71) SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANT.—The term 'significant security-based derivatives market participant' means—

''(A) any person (other than an investment company registered under the Investment Company Act of 1940) that is engaged in the business of purchasing or selling one or more security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) for such person's own account or for others, or making a market in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order), the purchases or sales of which are not solely for the purpose of managing the risk associated with—

''(i) an asset that is or is anticipated to be owned, produced, manufactured, processed, or merchandised;

''(ii) potential changes in the value of services to be purchased or provided, or anticipated to be purchased or provided; or

''(iii) a liability incurred or anticipated to be incurred by such person that is not, or is not related to, a security-based swap; or

''(B) any other person designated by the Commission, by rule, regulation, or order, after consultation with the Commodity Futures Trading Commission, as necessary or appropriate in the public interest, the protection of investors, or in furtherance of the purposes of this title.

''(72) TRADE REPOSITORY.—The term 'trade repository' means any person that collects, calculates, processes, or prepares information with respect to transactions or positions in security-based swaps or security derivatives by the Commission under section 17C(d)(1)(A)(ii).''.

(b) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting ''security-based swap,'' after ''security future,'';

(2) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security-based swap (or other security derivative as the Commission determines by rule or regulation) by or on behalf of the issuer of the securities upon which such security-based swap or security derivative is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''; and

(3) by adding at the end the following:

''(17) The terms 'derivative', 'swap', 'security derivative' and 'security-based swap' have the same meanings as in paragraphs (65), (66), (69), and (70), respectively, of section 3(a) of the Securities Exchange Act of 1934.

''(18) The terms 'purchase' or 'sale' of a security-based swap, shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

SEC. 102. RATIONALIZATION OF FINANCIAL PRODUCT OVERSIGHT.

(a) REPEAL OF SWAP AGREEMENT EXCLUSION.—

(1) REPEAL OF LAWS.—The following provisions of law are repealed:

(A) Sections 206A, 206B, and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

(B) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1).

(C) Section 17(d) of the Securities Act of 1933 (15 U.S.C. 77q(d)).

(D) Section 3A of the Securities Exchange Act of 1934 (15 U.S.C. 78c–1).

(E) Section 9(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(i)).

(F) Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455).

(G) Section 16(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(g)).

(H) Section 20(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(f)).

(I) Section 21A(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(g)).

(2) CONFORMING AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) is amended by striking ''or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

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

(A) in section 9(a) (15 U.S.C. 78i(a))—

(i) in paragraph (1)—

(I) by striking ''For the'' and inserting ''for the''; and

(II) by striking the period at the end an inserting a semicolon; and

(ii) by striking paragraphs (2) through (5) and inserting the following:

''(2) to effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

''(3) if a broker or dealer, or other person selling or offering for sale or purchasing or offering to purchase the security to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security;

''(4) if a broker or dealer, or the person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which the broker, dealer, or such person knew or had reasonable grounds to believe was false or misleading;

''(5) for a consideration, received directly or indirectly from a broker or dealer, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase of any security registered on a national securities exchange or any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security; or'';

(B) in section 10(b) (15 U.S.C. 78j(b))—

(i) by striking ''or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(ii) by striking ''Rules promulgated under subsection (b)'' and all that follows through ''as they apply to securities'';

(C) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

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

(ii) in each of subparagraphs (B) and (C), by striking ''swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears and inserting ''swap'';

(D) in section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), by striking ''swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act)'' and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(E) in section 16(a)(3)(B) (15 U.S.C. 78p(a)(3)(B)), by striking ''security-based swap agreement'' and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(F) in section 16(b) (15 U.S.C. 78p(b))—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears and inserting ''; (or security derivative, as the Commission determines by rule, regulation, or order)''; and

(ii) by striking ''swap agreement'' each place that term appears and inserting ''swap (or security derivative, as the Commission determines by rule, regulation, or order)'';

(G) in section 20(d) (15 U.S.C. 78t(d)), by striking ''or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security'' and inserting '', security futures product or swap''; and

(H) in section 21A(a)(1) (15 U.S.C. 78u–1(a)(1)), by striking ''or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(b) RATIONALIZATION OF SECURITY FUTURES OVERSIGHT.—

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

(A) in section 3(a) of (15 U.S.C. 78c(a)), by striking paragraph (55) and inserting the following:

''(55) The term 'security future'—

''(A) means a contract of sale for future delivery of a security or an index of securities, including any interest therein or based on the value thereof, or based on any financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing, other than an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than a municipal security, under paragraph (29), as in effect on the date of enactment of the Futures Trading Act of 1982); and

''(B) does not include any security-based swap.'';

(B) in section 6 (15 U.S.C. 78f)—

(i) by striking subsections (g), (i), and (k);

(ii) by redesignating subsections (h) and (j) as subsections (g) and (h), respectively; and

(iii) in subsection (g), as so redesignated—

(I) in paragraph (2)—

(aa) by striking ''(A)''; and

(bb) by striking ''and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act'';

(II) in paragraph (3)(A), by striking ''security of a narrow-based security'' and inserting ''of an'';

(III) in paragraph (3)(D), by striking ''and the Commodity Futures Trading Commission jointly determine'' and inserting ''determines'';

(IV) in paragraph (3)(G), by striking ''the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or'';

(V) in paragraph (4)(A), by striking ''and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly'' and inserting ''may, by rule, regulation, or order,'';

(VI) in paragraph (4)(B), by striking ''and the Commodity Futures Trading Commission, by order, may jointly'' and inserting ''may, by order,'';

(VII) in paragraph (6)—

(aa) by striking ''and the Commodity Futures Trading Commission'';

(bb) by striking ''jointly''; and

(cc) by striking ''and the Commodity Exchange Act''; and

(VIII) in paragraph (7)—

(aa) by striking subparagraph (A) and inserting the following:

''(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association that is registered pursuant to section 15A(a) may trade a security futures product that does not conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3).''; and

(bb) by subparagraph (B), by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall'';

(C) in section 7 (15 U.S.C. 78g)—

(i) in subsection (c)(2)(A)(ii), by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall'';

(ii) in subsection (c)(2)(A), by striking ''and the Commodity Futures Trading Commission have not jointly'' and inserting ''has not''; and

(iii) in subsection (c)(2)(B)—

(I) by striking ''and the Commodity Futures Trading Commission shall jointly'' and inserting ''shall''; and

(II) by striking ''and the Commodity Futures Trading Commission jointly deem'' and inserting ''deems'';

(D) in section 11A (15 U.S.C. 78k–1), by striking subsection (e);

(E) in section 12(k) (15 U.S.C. 78l(k))—

(i) in paragraph (1), by striking ''If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.''; and

(ii) in paragraph (2)(B), by striking ''If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.'';

(F) in section 15 (15 U.S.C. 78o)—

(i) in subsection (b), by striking paragraphs (11) and (12); and

(ii) in subsection (c)(3)—

(I) by striking ''(A) No'' and inserting ''No''; and

(II) by striking subparagraph (B);

(G) in section 15A (15 U.S.C. 78o–3), by striking subsections (k), (l), and (m);

(H) in section 17(b) (15 U.S.C. 78q(b))—

(i) in paragraph (1)—

(I) by striking ''(1)'' and all that follows through ''All records'' and inserting ''All records'';

(II) by striking ''of a—'' and all that follows through ''(A) registered'' and inserting ''of a registered''; and

(III) by striking ''; or'' and all that follows through the end of subparagraph (B) and inserting a period; and

(ii) by striking paragraphs (2) through (4);

(I) in section 17A(b) (15 U.S.C. 78q–1(b))—

(i) by striking paragraph (7); and

(ii) by redesignating paragraph (8) as paragraph (7);

(J) in section 19 (15 U.S.C. 78s)—

(i) in subsection (b)—

(I) by striking paragraphs (7) and (9); and

(II) by redesignating paragraph (8) as paragraph (7); and

(ii) in subsection (d), by striking paragraph (3);

(K) in section 21 (15 U.S.C. 78u), by striking subsection (i); and

(L) in section 28(e) (15 U.S.C. 78bb(e)), by striking paragraph (4).

(2) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77 et seq.) is amended—

(A) in section 2(a) (15 U.S.C. 77b(a)), by striking paragraph (16) and inserting the following:

''(16) The terms 'security future' and 'security futures product' have the same meanings as in sections 3(a)(55) and 3(a)(56), respectively, of the Securities Exchange Act of 1934.''; and

(B) in section 3(a)(14)(A) (15 U.S.C. 77c(a)(14)(A)), by striking ''or exempt from registration under subsection (b)(7) of such section 17A''.

(3) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 2(a)(52) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(52)) is amended to read as follows:

''(52) The term 'security future' has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(4) CONFORMING AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(27) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(27)) is amended to read as follows:

''(27) The term 'security future' has the same meaning as in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(5) CONFORMING AMENDMENTS TO THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended—

(A) in section 3(a)(2)(A) (15 U.S.C. 78ccc(a)(2)(A))—

(i) in clause (i), by inserting ''and'' after the semicolon at the end;

(ii) in clause (ii), by striking ''; and'' and inserting a period; and

(iii) by striking clause (iii); and

(B) in section 16(14) (15 U.S.C. 78lll(14)), by striking ''section 3(a)(55)(A)'' and inserting ''section 3(a)(55)''.

(c) CLARIFICATION OF THE STATUS OF EVENT CONTRACTS.—

(1) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—Section (3)(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10) is amended—

(A) by striking ''term 'security' means any note'' and inserting the following: ''term 'security'—

''(A) means—

''(i) any note'';

(B) by striking ''or any certificate'' and inserting the following: ''; or

''(ii) any certificate''; and

(C) by striking ''any of the foregoing, but shall not'' and inserting the following: ''any security described in clause (i); or

''(iii) any agreement, contract, or transaction that is associated with a financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing or any security described in clause (i) or (ii); and

''(B) does not''.

(2) AMENDMENTS TO THE SECURITIES ACT OF 1933.—Section (2)(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) is amended—

(A) by striking ''means any note'' and inserting the following: ''means—

''(A) any note'';

(B) by striking '', or any certificate'' and inserting the following: ''; or

''(B) any certificate''; and

(C) by striking ''any of the foregoing.'' and inserting the following: ''any security described in subparagraph (A); or

''(C) any agreement, contract, or transaction that is associated with a financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, an issuer of a security, or group or index of securities, or interests in securities or issuers of securities, or based on the value of any of the foregoing or any security described in subparagraph (A) or (B).''.

SEC. 103. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND THE USE OF TRADE REPOSITORIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 17B (15 U.S.C. 78q–2) the following new section:

''SEC. 17C. USE OF CLEARING AGENCIES AND TRADE REPOSITORIES FOR DERIVATIVES TRANSACTIONS.

''(a) FINDINGS.—Congress finds that—

''(1) the proliferation of over-the-counter security-based swaps poses unacceptable risks to the financial system;

''(2) clearing standardized security-based swaps through well-regulated central counterparties would reduce systemic risk in the financial system;

''(3) the markets for standardized security-based swaps suffer from a lack of reliable and accurate transaction information that is available to the public, investors, and regulators; and

''(4) weaknesses in the regulation of markets for standardized security-based swaps have detracted from the efficiency and transparency of trading in such markets and hampered the surveillance and oversight of such markets.

''(b) PURPOSES.—The purposes of this section are—

''(1) to establish well-regulated markets for standardized security-based swaps to promote efficiency and transparency of trading and enhance the surveillance and oversight of such markets; and

''(2) to promote the public interest, the protection of investors, and the maintenance of fair and orderly markets to assure—

''(A) the prompt and accurate clearance and settlement of transactions in standardized security-based swaps;

''(B) the prompt and accurate reporting of transactions in security-based swaps to a trade repository or a registered clearing agency;

''(C) the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, commodity options, and derivatives;

''(D) availability to the public, investors, and regulators of reliable and accurate quotation and transaction information in security-based swaps;

''(E) economically efficient execution of transactions in security-based swaps; and

''(F) fair competition among markets in the trading of security-based swaps.

''(c) USE OF DERIVATIVES CLEARING AGENCIES.—

''(1) IN GENERAL.—Any person that is a party to a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) that the Commission determines is 'standardized' shall submit such instrument for clearing to a registered clearing agency within the period specified by rule of the Commission.

''(2) DEFINITION OF 'STANDARDIZED'.—

''(A) IN GENERAL.—The Commission shall, by rule, define the term 'standardized' for purposes of this section.

''(B) FACTORS.—In defining the term 'standardized', the Commission shall—

''(i) be consistent with the public interest, the protection of investors, the safeguarding of securities and funds, the maintenance of fair competition among market participants and among clearing agencies, and the purposes of this section;

''(ii)(I) consult with, and consider the views of, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System; and

''(II) seek to maintain comparability, to the maximum extent practicable, with the definition of the Commodity Futures Trading Commission of the term 'standardized' for purposes of section 4r of the Commodity Exchange Act; and

''(iii) to the extent applicable to a particular security-based swap or security derivative or class of security-based swaps or security derivatives, consider—

''(I) whether a clearing agency is prepared to clear the security-based swap or security derivative, and such clearing agency has in place effective risk management systems;

''(II) the availability or ability to facilitate standard documentation of terms of the security-based swap or security derivative;

''(III) the liquidity of the security-based swap or security derivative and its underlying security, security of a reference entity, or group or index thereof;

''(IV) the ability to value the security-based swap or security derivative, underlying security, or security of a reference entity, or group or index thereof consistently with an accepted pricing methodology, including the availability of intraday prices; and

''(V) such other factors as are consistent with the purposes of this section.

''(3) EXEMPTION AUTHORITY.—

''(A) IN GENERAL.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, may conditionally or unconditionally exempt from the requirements of this subsection and the rules issued under this subsection, any person, transaction, or security.

''(B) PRIOR CONSULTATION WITH THE COMMODITY FUTURES TRADING COMMISSION AND THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

''(i) CONSULTATION.—Before acting by rule or order to exempt any person, transaction, or security from the requirements of this subsection or the rules issued under this subsection, the Commission shall consult with, and consider the views of, the Commodity Futures Trading Commission and the Board of Governors of the Federal Reserve System concerning whether such exemption is necessary and appropriate for the reduction of risk and in the public interest.

''(ii) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this subparagraph, the Commission shall send a notice to the Commodity Futures Trading Commission and the Board of Governors describing such exemption. If either the Commodity Futures Trading Commission or the Board of Governors issues a finding under clause (i) that such an exemption does not meet the standard described in clause (i), the Commission may not issue such exemption.

''(iii) DEADLINE.—Any finding by the Commodity Futures Trading Commission or the Board of Governors of the Federal Reserve System shall be made and provided in writing to the Commission not later than 30 days after the date of receipt of notice of a proposed exemption by the Commission.

''(iv) NONDELEGATION.—Action by the Commodity Futures Trading Commission or the Board of Governors under this subparagraph may not be delegated.

''(d) TRADE REPOSITORIES.—

''(1) USE OF TRADE REPOSITORIES.—

''(A) IN GENERAL.—Any person that enters into or effects a transaction in a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) shall submit such transaction for clearing to a registered clearing agency or report such transaction to a trade repository registered in accordance with this subsection within the period specified by rule of the Commission.

''(B) REQUIRED REPORTING AUTHORIZED.—The Commission may, by rule, require any person to report to any registered clearing agency and registered trade repository such transaction information as the Commission deems necessary or appropriate, to permit such clearing agency or trade repository to meet the purposes of this section.

''(C) EXEMPTION AUTHORITY.—The Commission by rule, regulation, or order, as the Commission deems consistent with the public interest or the protection of investors, may conditionally or unconditionally exempt from the requirements of this paragraph and the rules issued under this paragraph any person, transaction, or security that enters into or effects a transaction in a security or class of securities.

''(2) REGISTRATION.—A trade repository may register for purposes of this subsection by filing with the Commission an application in such form as the Commission, by rule, may prescribe, containing the rules of the trade repository and such other information and documentation as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or for the prompt and accurate collection, calculation, processing, and preparation of information regarding security-based swaps or security derivatives.

''(3) COMMISSION PROCEDURES FOR APPLICATIONS.—

''(A) NOTICE.—On the filing of an application for registration pursuant to paragraph (2), the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application.

''(B) ACTIONS.—Not later than 90 days after the date of publication of a notice under subparagraph (A) (or within such longer period as to which the applicant consents), the Commission shall—

''(i) by order, grant such registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(C) PROCEDURE FOR DENIALS.—

''(i) IN GENERAL.—Proceedings instituted under subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and provide an opportunity for a hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration under subparagraph (A).

''(ii) ACTIONS.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny the subject registration.

''(iii) EXTENSIONS.—The Commission may extend the time for conclusion of the proceedings under subparagraph (C) for—

''(I) not longer than an additional 60 days, if the Commission finds good cause for such extension and publishes its reasons for so finding; or

''(II) for such longer period as to which the applicant consents.

''(D) STANDARDS FOR GRANTING REGISTRATION.—The Commission shall grant the registration of a trade repository for purposes of this section if the Commission finds that the trade repository is so organized, and has the capacity to be able—

''(i) to assure the prompt, accurate, and reliable performance of its functions as a trade repository;

''(ii) to comply with the provisions of this title (including rules and regulations issued under this title); and

''(iii) to carry out the functions of a trade repository in a manner consistent with the purposes of this section.

''(E) STANDARDS FOR DENIAL.—The Commission shall deny the registration of a trade repository if the Commission does not make the findings described in subparagraph (D).

''(4) WITHDRAWAL OF REGISTRATION.—

''(A) IN GENERAL.—A registered trade repository may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration under this section by filing a written notice of withdrawal with the Commission.

''(B) CANCELLATION.—If the Commission finds that any trade repository is no longer in existence or has ceased to do business in the capacity specified in its application for registration under this section, the Commission, by order, shall cancel the registration.

''(5) ACCESS TO TRADE REPOSITORY SERVICES.—

''(A) NOTICE OF PROHIBITION OR LIMITATION.—

''(i) IN GENERAL.—If any registered trade repository prohibits or limits any person in respect of access to services offered, directly or indirectly, by the trade repository, the registered trade repository shall promptly file notice of the prohibition with the Commission, in such form and containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(ii) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a registered trade repository is required by this subparagraph to file notice shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby, filed not later than 30 days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine.

''(iii) STAYS.—Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of a prohibition or limitation described in clause (i), unless the

Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

''(iv) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(B) STANDARDS OF REVIEW.—In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered trade repository—

''(i) if the Commission finds after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this title and the rules and regulations thereunder, and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding; and

''(ii) if the Commission does not make any such finding, or if it finds that such prohibition or limitation imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the prohibition or limitation and require the registered trade repository to permit such person access to the services offered by the registered trade repository to which the prohibition or limitation applied.

''(6) ADMINISTRATIVE PROCEEDING AUTHORITY.—If the Commission finds, on the record after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title and that a registered trade repository has violated or is unable to comply with any provision of this title or the rules or regulations thereunder, the Commission, by order, may—

''(A) censure or place limitations upon the activities, functions, or operations of any registered trade repository; or

''(B) suspend for a period of not longer than 12 months or revoke the registration of any such trade repository.

''(7) RULEMAKING AUTHORITY.—No registered trade repository shall, directly or indirectly, engage in any activity as a trade repository in contravention of such rules and regulations as the Commission may prescribe as appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, including to assure that all persons may obtain on terms that are fair and reasonable and not unreasonably discriminatory such transaction and position information for security-based swaps and security derivatives as is disseminated by any clearing agency or trade repository.

''(8) CONSULTATION.—

''(A) IN GENERAL.—Prior to adopting any rules applicable to trade repositories pursuant to section 17(a), the Commission shall consult with, and shall consider the views of, the Commodity Futures Trading Commission.

''(B) COMPARABILITY.—The Commission and the Commodity Futures Trading Commission shall seek to maintain comparability, to the maximum extent practicable, of their respective recordkeeping and reporting requirements for trade repositories.

''(e) TIMING.—The Commission may, by rule, specify the date by which persons are required—

''(1) to submit transactions in standardized security-based swaps and security derivatives for clearing to a clearing agency pursuant to subsection (c); and

''(2) to submit transactions in security-based swaps and security derivatives for clearing to a clearing agency or report transactions in such instruments to a registered trade repository pursuant to subsection (d).

''(f) COLLECTION, CONSOLIDATION, AND DISSEMINATION OF INFORMATION ON TRANSACTIONS AND POSITIONS IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—

''(1) COMMISSION ACTION REQUIRED.—The Commission shall, consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the purposes of this section, use the authority of the Commission under this title to facilitate—

''(A) the collection, consolidation, and dissemination of information on transactions and positions in security-based swaps and security derivatives; and

''(B) the establishment of coordinated facilities for the consolidation of information on transactions and positions in security-based swaps and security derivatives.

''(2) ACTIONS REQUIRED OF REGISTERED ENTITIES.—The Commission, by rule, regulation, or order is authorized to require each clearing agency that clears or proposes to clear transactions in security-based swaps and security derivatives, and each trade repository registered or applying to become registered under this section, in such form and frequency as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title—

''(A) to disseminate certain transaction or position information in security-based swaps and security derivatives; and

''(B) to assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to transactions and positions, as appropriate, cleared by such clearing agency or reported to such registered trade repository.''.

SEC. 104. PRUDENTIAL SUPERVISION AND REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS AND INCENTIVES FOR TRADING ON REGULATED EXCHANGES.

(a) REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

''SEC. 15F. REGULATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) REGISTRATION BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—It shall be unlawful for any significant security-based derivatives market participant to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), unless such significant security-based derivatives market participant has registered in accordance with subsection (b).

''(b) MANNER OF REGISTRATION OF SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—A significant security-based derivatives market participant may register for purposes of this section by filing with the Commission an application for registration, in such form and containing such information and documentation concerning such significant security-based derivatives market participant and any persons associated with such significant security-based derivatives market participant as the Commission, by rule, regulation, or order may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(2) COMMISSION ACTION.—

''(A) TIMING.—Not later than 45 days after the date of filing of an application under paragraph (1) (or within such longer period as to which the applicant consents), the Commission shall—

''(i) by order, grant registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(B) COMMISSION PROCEEDINGS.—Proceedings described in subparagraph (A)(ii) shall—

''(i) include notice of the grounds for denial under consideration and opportunity for hearing; and

''(ii) be concluded within 120 days of the date of the filing of the application for registration.

''(C) GRANT OR DENIAL.—At the conclusion of proceedings under this paragraph, the Commission, by order, shall grant or deny any application for registration.

''(D) EXTENSION AUTHORIZED.—The Commission may extend the time for the conclusion of proceedings under this paragraph for not longer than an additional 90 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

''(E) CONDITIONS OF GRANT OR DENIAL OF APPLICATIONS.—The Commission shall—

''(i) grant an application for registration of a significant security-based derivatives market participant, if the Commission finds that the requirements of this section are satisfied; and

''(ii) deny such registration, if the Commission does not make a finding described in clause (i), or finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e).

''(3) WITHDRAWAL AUTHORIZED.—Any person that has filed an application pursuant to paragraph (1) may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, withdraw such application by filing a written withdrawal with the Commission.

''(c) BUSINESS CONDUCT REQUIREMENTS.—

''(1) PROHIBITION.—It shall be unlawful for any significant security-based derivatives market participant and such other persons as the Commission may determine, by rule, regulation, or order, to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), unless such person complies with such business conduct requirements as the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate regulatory authorities, may jointly prescribe, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of this title.

''(2) CONTENT.—Business conduct requirements under paragraph (1) shall—

''(A) establish the standard of care required for a significant security-based derivatives market participant and such other persons to verify that any counterparty meets the eligibility standards for an eligible contract participant or qualified institutional buyer;

''(B) require disclosure by the significant security-based derivatives market participant and such other persons to any counterparty to the transaction of—

''(i) material product-specific information about the risks and characteristics of the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(ii) the source and amount of any fees or other material remuneration that the significant security-based derivatives market participant and such other persons would directly or indirectly expect to receive in connection with the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order); and

''(iii) any other material incentives or conflicts of interest that the significant security-based derivatives market participant and such other persons may have in connection with the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(C) establish a minimum standard of conduct for a significant security-based derivatives market participant and such other persons with respect to any counterparty, other than a qualified institutional buyer, for—

''(i) providing disclosure of the general risks and characteristics of any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order);

''(ii) communicating in a fair and balanced manner based on principles of fair dealing and good faith;

''(iii) assessing the appropriateness of any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) for the counterparty, except that, if the counterparty is an eligible contract participant, the significant security-based derivatives market participant may rely on a representation described in clause (iv)(VI) that the transaction is appropriate for such counterparty; and

''(iv) with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of section 3(a)(67)(A)(vii), having a reasonable basis to believe that the counterparty has an independent representative that—

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

''(II) is not subject to a statutory disqualification;

''(III) is independent of the significant security-based derivatives market participant;

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

''(V) makes appropriate disclosures; and

''(VI) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction;

''(D) require the availability of information about any security or the issuer of any security referenced in a security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), or upon which such security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) is based; and

''(E) establish such other standards and requirements as the Commission, acting jointly with the Commodity Futures Trading Commission and in consultation with the appropriate regulatory authorities, may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(d) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a significant derivatives market participant to permit any associated person of such significant derivatives market participant who is subject to a statutory disqualification to effect or be involved in effecting transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant derivatives market participant, if such significant derivatives market participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

''(e) ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) IN GENERAL.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any significant security-based derivatives market participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such action is in the public interest and that such significant security-based derivatives market participant, or any person associated with such significant security-based derivatives market participant effecting or involved in effecting transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant security-based derivatives market participant, whether prior or subsequent to becoming so associated—

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

''(B) has been convicted of any offense specified in subparagraph (B) of section 15(b)(4) during the 10-year period preceding the date of commencement of the proceedings under this paragraph;

''(C) is enjoined from any action, conduct, or practice specified in section 15(b)(4)(C);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of section 15(b)(4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in section 15(b)(4)(G).

''(2) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or at the time of the alleged misconduct, who was associated or was seeking to become associated, with a significant security-based derivatives market participant for the purpose of effecting or being involved in effecting any security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) on behalf of such significant security-based derivatives market participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period of not longer than 12 months, or bar such person from being associated with a significant security-based derivatives market participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such action is in the public interest, and that such person—

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

''(B) has been convicted of any offense specified in section 15(b)(4)(B) during the 10-year period preceding the date of commencement of the proceedings under this paragraph;

''(C) is enjoined from any action, conduct, or practice specified in section 15(b)(4)(C);

''(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of section 15(b)(4); or

''(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in section 15(b)(4)(G).

''(3) ADDITIONAL PROHIBITIONS.—It shall be unlawful—

''(A) for any person as to whom an order under paragraph (2) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a significant security-based derivatives market participant in contravention of such order; or

''(B) for any significant security-based derivatives market participant to permit such a person, without the consent of the Commission, to become or remain, a person associated with the significant security-based derivatives market participant in contravention of an order under paragraph (2), if such significant security-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the order.

''(f) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to conduct business as a significant security-based derivatives market participant, unless such person meets at all times such minimum capital and margin requirements as the appropriate regulatory authorities shall jointly prescribe, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of this title to provide safeguards with respect to the financial responsibility and related practices of the significant security-based derivatives market participant.

''(2) CAPITAL CONSIDERATIONS.—In setting capital requirements for significant security-based derivatives market participants, the appropriate regulatory authorities shall consider, among other things—

''(A) the liquidity of each security-based swap (or security derivative, as the Commission determines by rule, regulation, or order), including whether such instrument is traded on a liquid market, and whether it is centrally cleared; and

''(B) whether the security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) is used to offset or hedge another instrument or asset owned by such significant security-based derivative market participant.

''(3) MARGIN REQUIREMENTS.—The appropriate regulatory authorities shall jointly prescribe margin requirements, which may permit the use of non-cash collateral, that apply to security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) entered into by a significant security-based derivatives market participant, as the appropriate regulatory authorities jointly deem necessary or appropriate for the purpose of, among other things—

''(A) preserving the financial integrity of markets trading security-based swaps (or security derivatives); and

''(B) preventing systemic risk.

''(4) COMMISSION RULES.—Nothing in this section prevents the Commission from prescribing capital and margin requirements that are higher or more restrictive than the joint rules adopted under this subsection for significant security-based derivatives market participants for which it is the appropriate regulatory authority.

''(g) APPROPRIATE REGULATORY AUTHORITY DEFINED.—For purposes of this section, the term 'appropriate regulatory authority' means—

''(1) the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) with respect to a significant security-based derivatives market participant that is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), other than an affiliate of an insured depository institution;

''(2) the Federal Housing Finance Agency, with respect to a significant security-based derivatives market participant that is a regulated entity (as defined in section 1301 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502));

''(3) the Commodity Futures Trading Commission, with respect to a significant security-based derivatives market participant that is—

''(A) a futures commission merchant or an introducing broker (as defined in paragraphs (20) and (23) of section 1a of the Commodity Exchange Act, respectively), other than a broker or dealer registered pursuant to section 15(b) of this title (other than paragraph (11) thereof) or an affiliate of an insured depository institution; or

''(B) a commodity pool operator or commodity trading advisor (as defined in paragraphs (5) and (6) of section 1a of the Commodity Exchange Act, respectively), other than an affiliate of an insured depository institution; and

''(4) the Commission, with respect to any other significant security-based derivatives market participant for which there is not another appropriate regulatory authority otherwise specified in this subsection.

''(h) ENFORCEMENT AUTHORITY.—Each appropriate regulatory authority shall have sole authority to enforce compliance with the rules adopted under subsection (f) in the case of each significant security-based derivatives market participant for which it is the appropriate regulatory authority, as defined in subsection (g).''.

(b) EXEMPTION FROM BROKER OR DEALER REGISTRATION.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(13) EXEMPTION FOR SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—A person shall be exempt from the registration requirements of this section, to the extent that such person engages in transactions in security-based swaps, if such person would otherwise be required to register under this section only because such person effects transactions in security-based swaps with eligible contract participants and is a significant security-based derivatives market participant that has registered in accordance with section 15F(b).''.

SEC. 105. RECORDKEEPING AND REPORTING REQUIREMENTS FOR DERIVATIVES MARKET PARTICIPANTS.

(a) RECORDKEEPING AND EXAMINATION REQUIREMENTS FOR SECURITY-BASED DERIVATIVE MARKET PARTICIPANTS.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

''(l) RECORDKEEPING BY MARKET PARTICIPANTS IN SECURITY-BASED SWAPS OR SECURITY DERIVATIVES; EXAMINATIONS.—

''(1) RECORDKEEPING.—

''(A) IN GENERAL.—Effective not later than 180 days after the date of enactment of this subsection, the Commission shall, by rule, regulation, or order, require each significant security-based derivatives market participant, and such other persons as the Commission, by rule, regulation, or order, determines, to create, keep current, and maintain for prescribed periods such records, furnish such copies thereof (and make and disseminate such reports) relating to security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) to the Commission, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(B) MINIMUM REQUIREMENTS.—At a minimum, the actions of the Commission under subparagraph (A) shall require, as applicable, the creation and maintenance of client information records, agreements, client ledger information, trade blotters, memoranda of agreements to enter into confirmations, position records, and communications relating to transactions in security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) and the reporting of transactions and position data.

''(2) EXAMINATIONS.—All records of significant security-based derivatives market participants and such other persons described in paragraph (1) are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.''.

(b) REPORTING BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following new subsection:

''(m) REPORTING BY SIGNIFICANT SECURITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—For the purpose of monitoring the impact of transactions in security-based swaps and, as appropriate, security derivatives, and for the purpose of otherwise assisting the Commission in the enforcement of this title, any significant security-based derivatives market participant that purchases or sells security-based swaps (or security derivatives, as the Commission determines by rule, regulation, or order) shall report such information as the Commission may, by rule, regulation, or order, prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

''(2) CONSIDERATIONS.—In exercising its authority under this subsection, the Commission shall take into account—

''(A) existing reporting systems;

''(B) the costs associated with reporting such information; and

''(C) the relationship between the United States and international securities and derivatives markets.

''(3) LIMITATION ON DISCLOSURE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule, regulation, or order to be reported to the Commission under this subsection.

''(B) EXCEPTION.—Nothing in this subsection shall—

''(i) authorize the Commission to withhold information from Congress; or

''(ii) prevent the Commission from complying with—

''(I) a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction; or

''(II) an order of a court of the United States in an action brought by the United States or the Commission.

''(C) TREATMENT FOR TITLE 5 PURPOSES.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.''.

(c) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1), by inserting after ''Alaska Native Claims Settlement Act,'' the following: ''or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing, upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule, and'';

(2) in subsection (g)(1), by inserting after ''subsection (d)(1) of this section'' the following: ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule''; and

(3) in subsection (f)(1), by inserting after ''section (13)(d)(1) of this title'' the following: '', or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or security derivative that the Commission may define, by rule,''.

(d) INSTITUTIONAL INVESTMENT MANAGER REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (f)(1), by inserting before ''shall file reports'' the following: ''or security-based swaps or security derivatives that the Commission may define by rule, having such values as the Commission may determine, by rule''; and

(2) in subsection (f)(3), by inserting before ''updated as'' the following: ''and security-based swaps or security derivatives that the Commission may define, by rule''.

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

(f) RECORDKEEPING BY TRADE REPOSITORIES.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended by inserting ''registered trade repository,'' after ''registered securities information processor,''.

SEC. 106. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i), as amended by this Act, is amended by adding at the end the following:

''(j) DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY DERIVATIVES.—

''(1) IN GENERAL.—It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap or security derivative, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person.

''(2) RULEMAKING REQUIRED.—The Commission shall, for purposes of this subsection, by rule, regulation, or order, define and prescribe means reasonably designed to prevent transactions, acts, practices, and courses of business that are fraudulent, deceptive, or manipulative, and fictitious quotations.

''(3) CONSULTATION.—In adopting rules under this subsection, the Commission shall

consult with the Commodity Futures Trading Commission and seek to maintain comparability of such rules with similar rules of the Commodity Futures Trading Commission.''.

(b) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ANTIMANIPULATION PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) any transaction in connection with any security whereby any party to such transaction acquires—

''(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

''(B) any security futures product on or related to the security; or

''(C) any security-based swap involving the security or the issuer of the security;

''(2) any transaction in connection with any security with relation to which that person has, directly or indirectly, any interest in any—

''(A) put, call, straddle, option, or privilege described in paragraph (1);

''(B) security futures product described in paragraph (1); or

''(C) security-based swap described in paragraph (1); or

''(3) any transaction in any security for the account of any person who that person has reason to believe has, and who actually has, directly or indirectly, any interest in any—

''(A) put, call, straddle, option, or privilege described in paragraph (1);

''(B) security futures product with relation to such security described in paragraph (1); or

''(C) any security-based swap involving such security or the issuer of such security.''.

(c) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS OR SECURITY DERIVATIVES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 10A the following new section:

''SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS OR SECURITY DERIVATIVES.

''(a) RULEMAKING AUTHORITY.—

''(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may—

''(A) prescribe requirements regarding the size of positions that may be held by or on behalf of any person or persons in any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced; and

''(B) require any person that effects transactions for his own account or the account of others in any security-based swap (or security derivative, as the Commission determines by rule, regulation, or order) and any security on which such security-based swap (or security derivative) is based or referenced, or the issuer of such security is referenced, to report such information as the Commission may prescribe regarding any position or positions in security-based swaps (or security derivatives) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced.

''(2) EXEMPTIONS AUTHORIZED.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap (or security derivative) or class of security-based swaps (or security derivatives), or any transaction or class of transactions from any requirement that the Commission may establish under this subsection.

''(b) SELF-REGULATORY ORGANIZATIONS.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

''(1) to adopt rules regarding the size of positions in any security-based swap (or security derivative) and any security on which such security-based swap (or security derivative) is based or referenced, or as to which the issuer of such security is referenced that may be held by—

''(A) any member of such self-regulatory organization; or

''(B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap, security derivative, or other security; and

''(2) to adopt rules reasonably designed to assure compliance with requirements prescribed by the Commission under subsection (a).''.

(d) STATE GAMING AND BUCKET SHOP LAWS.—Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) STATE GAMING AND BUCKET SHOP LAWS.—

''(1) IN GENERAL.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages of that person due to the act that is the subject of the action.

''(2) RULE OF CONSTRUCTION.—Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person, to the extent that the exercise thereof does not conflict with the provisions of this title or the rules and regulations thereunder.

''(3) GAMING LAWS.—No provision of State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

''(A) any put, call, straddle, option, privilege, or other security that is subject to regulation under this title (except a security-based swap and any security that has a pari-mutual payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

''(B) any security-based swap between eligible contract participants; or

''(C) any security-based swap effected on a national securities exchange that is registered pursuant to section 6(b).

''(4) SECURITY FUTURES PRODUCT.—No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability.''.

SEC. 107. PROTECTIONS FOR MARKETING SECURITY-BASED SWAPS TO CERTAIN PERSONS.

(a) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f), as amended by this Act, is amended by adding at the end the following:

''(i) ELIGIBLE CONTRACT PARTICIPANTS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).''.

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

''(d) REGISTRATION OF SECURITY-BASED SWAPS.—Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect with respect to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy, or purchase, sell, or buy a security-based swap to any person who is not an eligible contract participant, as defined in section 3(a)(66) of the Securities Exchange Act of 1934.''.

SEC. 108. ENFORCEMENT.

Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended by adding at the end the following:

''(j) ENFORCEMENT OF PROVISIONS APPLICABLE TO DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—In addition to enforcement by the Commission under the securities laws of compliance with sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1), compliance with such sections shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, in the case of an insured depository institution, as those terms are defined in section 3 of that Act (12 U.S.C. 1813), other than an affiliate of an insured depository institution, as defined in section 3 of that Act (12 U.S.C. 1813);

''(B) the Commodity Exchange Act (7 U.S.C. 1 et seq.), by the Commodity Futures Trading Commission, in the case of a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor, as those terms are defined in sections 1a of the Commodity Exchange Act, other than an affiliate of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

''(C) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), by the Federal Housing Finance Agency, in the case of a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

''(2) VIOLATIONS TREATED AS VIOLATIONS OF OTHER LAWS.—For purposes of the exercise by any agency referred to in paragraph (1), a violation of sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1) of this title shall be deemed to be a violation of a requirement imposed under that provision of law. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with sections 6(l), 13(m), 15F(a), 15F(c), 15F(d), 17(l), 17C(b)(1), and 17C(c)(1) of this title, any other authority conferred on such agency by law.''.

SEC. 109. ENFORCEABILITY OF SECURITY-BASED SWAPS.

Section 29(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(b)(2)) is amended by striking ''and (B)'' and inserting the following: '', (B) that no agreement, contract, or transaction that is a security-based swap shall be void, voidable, or unenforceable by either party to such security-based swap, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such security-based swap under this section or any other provision of securities laws based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under sections 6(l), 10B, 13, 15(b), 15F, 17, and 17C of this title with respect to such security-based swap, and (C)''.

SEC. 110. TRANSFER AND RIGHTS OF CERTAIN CFTC EMPLOYEES.

(a) TRANSFER.—Each employee of the Commodity Futures Trading Commission (in this section referred to as the ''CFTC'') whose position and responsibilities would be more effectively utilized at the Securities and Exchange Commission (in this section referred to as the ''SEC''), based on this Act and the amendments made by this Act, as determined by the Secretary of the Treasury, shall be transferred to the SEC for employment, not later than 60 days after the date of enactment of this Act. Such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—

(1) IN GENERAL.—Each employee transferred under subsection (a) shall be guaranteed a position with equivalent status, tenure, pay and benefits as that held on the day immediately preceding the transfer, subject to paragraph (2).

(2) NO INVOLUNTARY SEPARATION OR REDUCTION.—An employee transferred under subsection (a) holding a permanent position on the day immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause, or, in the case of a temporary employee, separated in accordance with the terms of the appointment of the employee.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of an employee of the CFTC occupying a position in the excepted service or the Senior Executive Service, such employee shall, on and after the date of transfer to the SEC, be deemed to be appointed under the appointment authority of the SEC for filling an equivalent position at the SEC, subject to paragraph (2).

(2) DECLINING APPLICATION OF EQUIVALENT APPOINTMENT AUTHORITY.—The Chairman of the SEC may decline the application of the equivalent appointment authority of the SEC to an employee of the CFTC occupying a position in the excepted service or the Senior Executive Service under paragraph (1) to the extent that the authority by which the employee was appointed by the CFTC relates to—

(A) a position excepted from the competitive service because of its confidential, policymaking, policy-determining, or policy-advocating character; or

(B) a noncareer position in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Chairman of the SEC determines, after the end of the 1-year period beginning on the date of enactment of this Act, that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employee retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

TITLE II—REGULATION OF COMMODITY-BASED DERIVATIVES

SEC. 201. DEFINITIONS.

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

(1) by striking paragraphs (1), (25), (31), and (32);

(2) by redesignating paragraphs (2) through (4), (5) through (8), (9) through (24), (26) through (28), (29), (30), (33), and (34) as paragraphs (1) through (3), (7) through (10), (12) through (27), (28) through (30), (32), (33), (35), and (37), respectively;

(3) by inserting after paragraph (3) (as redesignated by paragraph (2) of this section) the following:

''(4) COMMODITY-BASED SWAP.—The term 'commodity-based swap' means a swap that is not a security-based swap, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(5) COMMODITY-BASED SWAP EXECUTION FACILITY.—The term 'commodity-based swap execution facility' means a trading facility registered under section 5h.

''(6) COMMODITY DERIVATIVE.—The term 'commodity derivative' means any derivative that is a contract of sale for future delivery of any commodity (or option on a contract of sale for future delivery of any commodity) subject to the exclusive jurisdiction of the Commission under this Act, other than a swap.'';

(4) by inserting after paragraph (10) (as redesignated by paragraph (2) of this section) the following:

''(11) DERIVATIVE.—The term 'derivative' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).'';

(5) by inserting after paragraph (30) (as redesignated by paragraph (2) of this section) the following:

''(31) PERSON ASSOCIATED WITH A SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'person associated with a significant commodity-based derivatives market participant' means—

''(i) any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a significant commodity-based derivatives market participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with a significant commodity-based derivatives market participant; and

''(iii) any employee of a significant commodity-based derivatives market participant.

''(B) EXCLUSION.—Other than for purposes of section 4s, the term 'person associated with a significant commodity-based derivatives market participant' does not include any person associated with a significant commodity-based derivatives market participant the functions of which are solely clerical or ministerial.'';

(6) in paragraph (32) (as redesignated by paragraph (2) of this section)—

(A) by striking subparagraph (D) and inserting the following:

''(D) a commodity-based swap execution facility registered under section 5h;'';

(B) in subparagraph (E), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(F) a significant commodity-based derivatives market participant; and

''(G) a trade repository under section 4r.'';

(7) by inserting after paragraph (33) (as redesignated by paragraph (2) of this section) the following:

''(34) SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANT.—

''(A) IN GENERAL.—The term 'significant commodity-based derivatives market participant' means—

''(i) any person that is engaged in the business of purchasing or selling 1 or more commodity-based swaps for the account of the person or for any other individual or entity, or making a market in commodity-based swaps, and the 1 or more purchases or sales of which are not solely for the purpose of managing the risk associated with—

''(I) an asset that is, or is anticipated to be, owned, produced, manufactured, processed, or merchandised;

''(II) potential changes in the value of services to be purchased or provided, or anticipated to be purchased or provided; or

''(III) a liability incurred or anticipated to be incurred by a person that is not, or is not related to, a commodity-based swap; or

''(ii) any other person designated by the Commission, after consultation with the Securities and Exchange Commission, by rule, regulation, or order as is appropriate to further—

''(I) the interests of the public;

''(II) the protection of market participants; or

''(III) the purposes of this Act.

''(B) EXCLUSION.—The term 'significant commodity-based derivatives market participant' does not include an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).'';

(8) by inserting after paragraph (35) (as redesignated by paragraph (2) of this section) the following:

''(36) SWAP.—The term 'swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).''; and

(9) by adding at the end the following:

''(38) TRADE REPOSITORY.—The term 'trade repository' means any person that collects, calculates, processes, or prepares information with respect to 1 or more transactions or positions in 1 or more commodity-based swaps.''.

SEC. 202. RATIONALIZATION OF FINANCIAL PRODUCT OVERSIGHT.

(a) CFTC AUTHORITY OVER COMMODITY-BASED SWAPS.—

(1) AMENDMENTS TO COMMODITY FUTURES MODERNIZATION ACT OF 2000.—

(A) DEFINITIONS.—Section 402 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27) is amended by striking subsection (d).

(B) EXCLUSION OF COVERED SWAP AGREEMENTS.—Section 407 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27e) is repealed.

(C) CONTRACT ENFORCEMENT.—Section 408 of the Commodity Futures Modernization Act of 2000 (7 U.S.C. 27f) is amended by striking subsections (b) and (c) and inserting the following:

''(b) PREEMPTION.—This title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of a hybrid instrument that is predominantly a banking product.''.

(2) AMENDMENTS TO COMMODITY EXCHANGE ACT.—

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

(i) in subsection (a)(1)—

(I) in the first sentence of subparagraph (A), by striking ''subparagraphs (C) and (D)

of this paragraph and subsections (c) through (i) of this section'' and inserting ''subparagraph (C) and subsections (c) through (e)'';

(II) in subparagraph (C), by striking clauses (ii) through (v) and inserting the following:

''(ii) CONTRACTS OF SALE FOR FUTURE DELIVERY.—This Act shall not apply to, and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any contract of sale (or option on such contract) for future delivery—

''(I) of any security, or interest in a security or based on the value of a security (other than an exempted security under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in that section 3(a), as in effect on the date of enactment of the Futures Trading Act of 1982), or any group or index of such securities or any interest in a security or based on the value of a security; or

''(II) based on any financial, economic, or commercial occurrence, extent of an occurrence, contingency, or consequence that is related to or based on a security, an interest in a security, or an issuer of a security, or based on the value of any of the foregoing (other than an exempted security under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security, as defined in that section 3(a), as in effect on the date of enactment of the Futures Trading Act of 1982), or any group or index of such securities, or interests in such securities or issuers of such securities, or based on the value of any of the foregoing.''; and

(III) by striking subparagraphs (D), (E), and (F);

(ii) by striking subsections (d), (e), (g), (h), and (i);

(iii) by inserting after subsection (c) the following:

''(d) COMMODITY-BASED SWAPS.—Nothing in this Act (other than subsections (a)(1)(B), (a)(1)(C), (e) and (f), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by the terms of the provisions to registered entities and Commission registrants) governs or applies to a commodity-based swap.''; and

(iv) by redesignating subsection (f) as subsection (e).

(B) CONFORMING AMENDMENTS.—

(i) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by section 201(2)) is amended in paragraph (35) by inserting before the period at the end the following: ''(as in effect on the day before the date of enactment of the Comprehensive Derivatives Regulation Act of 2009)''.

(ii) Section 5c(a)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)(1)) is amended by striking '', and section 2(h)(7) with respect to significant price discovery contracts,''.

(iii) Section 5d(a) of the Commodity Exchange Act (7 U.S.C. 7a–3(a)) is amended in the second sentence by striking ''subparagraphs (C) and (D) of section 2(a)(1)'' and inserting ''section 2(a)(1)(C)''.

(iv) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking '', or revocation of the right'' and all that follows through ''significant price discovery contract,''.

(v) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking '', or to revoke the right'' and all that follows through ''significant price discovery contract,''.

(vi) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking ''section 2(h)(7) or''.

(vii) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(I) by striking '', 2(d), 2(f), or 2(g)''; and

(II) by striking ''2(h) or''.

(3) AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.—Section 206 of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended—

(A) in subsection (a)—

(i) in paragraph (4), by inserting ''or'' after the semicolon at the end;

(ii) in paragraph (5) by striking ''; or'' at the end and inserting a period; and

(iii) by striking paragraph (6);

(B) by striking subsection (b); and

(C) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) RATIONALIZATION OF SECURITY FUTURES OVERSIGHT.—

(1) IN GENERAL.—

(A) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATIONS OF DUAL REGISTRANTS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by striking subsection (c).

(B) REGISTRATION OF FUTURES COMMISSION MERCHANTS, INTRODUCING BROKERS, AND FLOOR BROKERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(i) in paragraph (1), by striking ''(1)''; and

(ii) by striking paragraphs (2) through (4).

(C) DUAL TRADING.—Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is repealed.

(D) EXEMPTIONS FOR ASSOCIATED PERSONS OR SECURITIES BROKER-DEALERS.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k) is amended by striking paragraph (5) (as added by section 252(d) of the Commodity Futures Modernization Act of 2000 (114 Stat. 2763A–448)).

(E) ELECTION TO TRADE EXCLUDED AND EXEMPT COMMODITIES.—Section 5a of the Commodity Exchange Act (7 U.S.C. 7a) is amended by striking subsection (g).

(F) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended by striking subsection (f).

(G) DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.—Section 5f of the Commodity Exchange Act (7 U.S.C. 7b–1) is repealed.

(H) NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.—Section 6 of the Commodity Exchange Act is amended by striking subsection (g) (7 U.S.C. 9c).

(I) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) is amended by striking subsection (h).

(J) PUBLIC DISCLOSURE.—Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by striking paragraph (3).

(K) MARKET REPORTS.—Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by striking subsection (e).

(L) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended—

(i) by striking subsection (r); and

(ii) by redesignating subsection (q) (as added by section 233(5) of Public Law 97–444 (96 Stat. 2320)) as subsection (r).

(2) CONFORMING AMENDMENTS TO THE COMMODITY EXCHANGE ACT.—

(A) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by section 201(2)) is amended in paragraph (28), by striking the second sentence.

(B) Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking ''(except subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D))''.

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

(i) in subsection (b)—

(I) in paragraph (2)—

(aa) by striking subparagraph (D); and

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

(II) in paragraph (3)(B)(ii), by striking ''or, if the person trades only security futures products on the facility, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934''; and

(ii) in subsection (e)(1), by striking ''With respect to transactions other than transactions in security futures products, a'' and inserting ''A''.

(D) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking ''or section 5f''.

(E) Section 12(e)(2) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)) is amended—

(i) in subparagraph (A), by striking ''an electronic trading facility excluded under section 2(e) of this Act'' and inserting ''a commodity-based swap execution facility'';

(ii) in subparagraph (B)—

(I) by striking '', 2(d), 2(f), or 2(g)'' and inserting ''or 2(e)'';

(II) by striking ''2(h) or''; and

(III) by striking the period at the end and inserting ''; and''; and

(iii) by inserting after subparagraph (B) the following:

''(C) a commodity-based swap.''.

SEC. 203. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND USE OF TRADE REPOSITORIES.

(a) IN GENERAL.—The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

''SEC. 4r. REQUIRED CLEARING OF STANDARDIZED DERIVATIVES THROUGH CENTRAL COUNTERPARTIES AND USE OF TRADE REPOSITORIES.

''(a) FINDINGS.—Congress finds that—

''(1) the proliferation of over-the-counter commodity-based swaps poses unacceptable risks to the financial system;

''(2) clearing standardized commodity-based swaps through well-regulated central counterparties would reduce systemic risk in the financial system;

''(3) the markets for standardized commodity-based swaps suffer from a lack of reliable and accurate transaction information that is available to the public, market participants, producers, and regulators; and

''(4) weaknesses in the regulation of markets for standardized commodity-based swaps have detracted from the efficiency and transparency of trading in the markets and hampered the surveillance and oversight of the markets.

''(b) PURPOSES.—The purposes of this section are—

''(1) to establish well-regulated markets for standardized commodity-based swaps that promote efficiency and transparency of trading and enhance the surveillance and oversight of the markets; and

''(2) to promote the public interest, the protection of market participants, and the maintenance of fair and orderly markets by ensuring—

''(A) the prompt and accurate clearance and settlement of transactions in standardized commodity-based swaps;

''(B) the prompt and accurate reporting of transactions in commodity-based derivative

instruments to a trade repository or a derivatives clearing organization;

''(C) the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options on the contracts, commodity options, and derivatives;

''(D) the availability to the public, market participants, producers, and regulators of reliable and accurate quotation and transaction information in commodity-based swaps;

''(E) economically efficient execution of transactions in commodity-based swaps; and

''(F) fair competition among markets in the trading of commodity-based swaps.

''(c) USE OF DERIVATIVES CLEARING ORGANIZATIONS.—

''(1) IN GENERAL.—Any person that is a party to a commodity-based swap that the Commission determines is 'standardized' shall submit such instrument for clearing to a derivatives clearing organization within the period specified by the rules of the Commission.

''(2) DEFINITION OF 'STANDARDIZED'.—

''(A) IN GENERAL.—The Commission shall by rule, define the term 'standardized' for purposes of this section.

''(B) FACTORS.—In defining the term 'standardized', the Commission shall—

''(i) be consistent with—

''(I) the public interest;

''(II) the protection of market participants;

''(III) the safeguarding of commodity-based swap transactions and funds;

''(IV) the maintenance of fair competition among market participants and among derivatives clearing organizations; and

''(V) the purposes of this section;

''(ii)(I) consult with, and consider the views of, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System; and

''(II) seek to maintain comparability, to the maximum extent practicable, with the Securities and Exchange Commission definition of 'standardized' for purposes of section 17C of the Securities Exchange Act of 1934; and

''(iii) to the extent it is applicable to a particular commodity-based swap or class of commodity-based derivative swaps, consider—

''(I) whether a derivatives clearing organization is prepared to clear the commodity-based swap and the derivatives clearing organization has effective risk management systems;

''(II) the availability or ability to facilitate standard documentation of the terms of the commodity-based swap;

''(III) the liquidity of the commodity-based swap and the underlying commodity or group or index of the commodity-based swap;

''(IV) the ability to value the commodity-based swap, or underlying commodity, consistently with an accepted pricing methodology, including the availability of intraday prices; and

''(V) such other factors as are consistent with the purposes of this section.

''(3) EXEMPTIONS.—

''(A) IN GENERAL.—The Commission, by rule or order, as the Commission considers appropriate in the public interest or the protection of market participants, may conditionally or unconditionally exempt from the requirements of this subsection and the rules issued under this subsection any person, transaction, or standardized commodity-based swap.

''(B) PRIOR CONSULTATION WITH SECURITIES AND EXCHANGE COMMISSION AND BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—

''(i) CONSULTATION.—Before acting by rule or order to exempt any person, transaction, or standardized commodity-based swap from this subsection, the Commission shall consult with, and consider the views of, the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System concerning whether the exemption is appropriate for the reduction of risk and in the public interest.

''(ii) NOTICE REQUIRED.—Forty-five days prior to issuing any exemption, the Commission shall send a notice to the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System describing such exemption.

''(iii) PROHIBITION ON ISSUANCE.—If either the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System issues a finding that such an exemption does not meet the standard in clause (i), the Commission shall not grant the exemption.

''(iv) DEADLINE.—Any finding by the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System shall be made and received in writing by the Commission not later than 30 days after the date of receipt of a notice of a proposed exemption by the Commission.

''(v) NONDELEGATION.—Action by the Securities and Exchange Commission or the Board of Governors under this subparagraph may not be delegated.

''(d) TRADE REPOSITORIES.—

''(1) USE OF TRADE REPOSITORIES.—

''(A) IN GENERAL.—Any person that enters into or effects a transaction in a commodity-based swap shall submit the transaction for clearing to a derivatives clearing organization or report the transaction to a trade repository registered in accordance with this subsection within the period specified by any rule adopted under subsection (e).

''(B) INFORMATION.—The Commission may, by rule, require any person to report to derivatives clearing organizations and registered trade repositories such transaction information as the Commission considers appropriate to permit the derivatives clearing organizations and trade repositories to meet the purposes of this section.

''(2) REGISTRATION.—A trade repository may register for purposes of this subsection by filing with the Commission an application in such form as the Commission, by rule, may prescribe containing the rules of the trade repository and such other information and documents as the Commission, by rule, may prescribe as appropriate in the public interest, for the protection of market participants, or for the prompt and accurate collection, calculation, processing, and preparation of information regarding transactions and positions in commodity-based swap.

''(3) COMMISSION PROCEDURES FOR APPLICATIONS.—

''(A) IN GENERAL.—On the filing of an application for registration pursuant to paragraph (2), the Commission shall publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning the application.

''(B) ACTIONS.—Not later than 90 days after the date of the publication of the notice (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant the registration; or

''(ii) institute proceedings to determine whether the registration should be denied.

''(C) PROCEDURE FOR DENIALS.—

''(i) IN GENERAL.—The proceedings described in subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and an opportunity for a hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration.

''(ii) ACTIONS.—At the conclusion of the proceedings the Commission, by order, shall grant or deny the registration.

''(iii) EXTENSIONS.—The Commission may extend the time for the conclusion of the proceedings for—

''(I) not more than 60 days if the Commission—

''(aa) finds good cause for the extension; and

''(bb) publishes a description of the reasons of the Commission for the finding; or

''(II) with the consent of the applicant, a longer period.

''(D) STANDARDS FOR GRANTING REGISTRATION.—The Commission shall grant the registration of a trade repository for purposes of this section if the Commission finds that the trade repository is so organized, and has the capacity—

''(i) to assure the prompt, accurate, and reliable performance of the functions of a trade repository;

''(ii) to comply with this Act (including rules and regulations issued under this Act); and

''(iii) to carry out the functions of a trade repository in a manner consistent with the purposes of this section.

''(E) STANDARD FOR DENIAL OF REGISTRATION.—The Commission shall deny the registration of a trade repository if the Commission does not make a finding described in subparagraph (D).

''(4) WITHDRAWAL OF REGISTRATION.—

''(A) IN GENERAL.—A registered trade repository may, on such terms and conditions as the Commission considers appropriate in the public interest or for the protection of market participants, withdraw from registration by filing a written notice of withdrawal with the Commission.

''(B) CANCELLATION.—If the Commission finds that any trade repository is no longer in existence or has ceased to do business in the capacity specified in the application of the trade repository for registration, the Commission, by order, shall cancel the registration.

''(5) ACCESS TO TRADE REPOSITORY SERVICES.—

''(A) NOTICE OF PROHIBITION OR LIMITATION ON ACCESS.—

''(i) IN GENERAL.—If any registered trade repository prohibits or limits any person access to services offered, directly or indirectly, by the trade repository, the registered trade repository shall promptly file notice of the prohibition or limitation with the Commission.

''(ii) CONTENT.—A notice under clause (i) shall be in such form and contain such information as the Commission, by rule, may prescribe as appropriate in the public interest or for the protection of investors.

''(B) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a registered trade repository is required by subparagraph (A) to file notice shall be subject to review by the Commission on—

''(i) the motion of the Commission; or

''(ii) application by any person aggrieved by the prohibition or limitation filed—

''(I) not later than 30 days after the date on which the notice described in subparagraph (A) has been filed with the Commission and received by the aggrieved person; or

''(II) within such longer period as the Commission may determine.

''(C) STAYS.—

''(i) IN GENERAL.—Application to the Commission for review, or the institution of review by the Commission on the motion of the Commission, shall not operate as a stay

of the prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay.

''(ii) HEARING.—A hearing under clause (i) may consist solely of the submission of affidavits or presentation of oral arguments.

''(iii) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(D) STANDARDS OF REVIEW.—

''(i) DISMISSAL OF PROCEEDINGS.—In any proceeding to review the prohibition or limitation of any person to access to services offered by a registered trade repository, the Commission, by order, shall dismiss the proceeding if the Commission finds, after notice and opportunity for hearing, that—

''(I) the prohibition or limitation is consistent with this Act (including rules and regulations); and

''(II) the person has not been discriminated against unfairly.

''(ii) ACCESS TO SERVICES.—If the Commission does not make a finding described in clause (i) or the Commission finds that the prohibition or limitation imposes any burden on competition that is not appropriate in furtherance of the purposes of this Act, the Commission, by order, shall—

''(I) set aside the prohibition or limitation; and

''(II) require the registered trade repository to permit the person access to the services offered by the registered trade repository to which the prohibition or limitation applied.

''(6) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations on the activities, functions, or operations of any registered trade repository or suspend for a period not exceeding 12 months or revoke the registration of any trade repository, if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, suspension, or revocation is appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act; and

''(B) the trade repository has violated or is unable to comply with any provision of this Act (including rules or regulations).

''(7) RULEMAKING AUTHORITY.—No registered trade repository shall, directly or indirectly, engage in any activity as a trade repository in contravention of such rules and regulations as the Commission may prescribe—

''(A) as appropriate in the public interest;

''(B) for the protection of market participants; or

''(C) otherwise in furtherance of the purposes of this Act, including to ensure that all persons may obtain on terms that are fair and reasonable and not unreasonably discriminatory such transaction and position information for commodity-based swaps as is disseminated by any derivatives clearing organization or trade repository.

''(8) CONSULTATION.—

''(A) IN GENERAL.—Prior to adopting any rules applicable to trade repositories pursuant to subsection (g), the Commission shall consult with and consider the views of the Securities and Exchange Commission.

''(B) COMPARABILITY.—The Commission and the Securities and Exchange Commission shall seek to maintain comparability, to the maximum extent practicable, of applicable respective recordkeeping and reporting requirements for trade repositories.

''(e) TIMING.—The Commission may by rule specify the date by which persons are required—

''(1) to submit transactions in standardized commodity-based swaps for clearing to a derivatives clearing organization pursuant to subsection (c); and

''(2)(A) to submit transactions in commodity-based swaps for clearing to a derivatives clearing organization; or

''(B) to report transactions in the commodity-based derivative instruments to a registered trade repository pursuant to subsection (d).

''(f) COLLECTION, CONSOLIDATION, AND DISSEMINATION OF INFORMATION ON TRANSACTIONS AND POSITIONS IN COMMODITY-BASED SWAPS.—

''(1) COMMISSION ACTION REQUIRED.—The Commission shall, consistent with the public interest, the protection of market participants, the maintenance of fair and orderly markets, and the purposes of this section, use the authority of the Commission under this Act to facilitate—

''(A) the collection, consolidation, and dissemination of information on transactions and positions in commodity-based swaps; and

''(B) the establishment of coordinated facilities for the consolidation of information on transactions and positions in commodity-based swaps.

''(2) ACTIONS REQUIRED BY REGISTERED ENTITIES.—The Commission, by rule, regulation, or order, may require each derivatives clearing organization that clears transactions in commodity-based swaps, and each registered trade repository registered or applying to become registered, in such form and frequency as the Commission shall prescribe as appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act—

''(A) to disseminate certain transaction or position information concerning commodity-based swaps; and

''(B) to ensure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to transactions and positions, as appropriate, cleared by or reported to the derivatives clearing organization or the registered trade repository.

''(g) RECORDS, REPORTS, AND EXAMINATIONS.—

''(1) IN GENERAL.—Each registered trade repository shall make and keep for prescribed periods such records, furnish such copies of the records, and make and disseminate such reports as the Commission, by rule, prescribes as appropriate in the public interest, or otherwise in furtherance of the purposes of this Act.

''(2) EXAMINATIONS.—All records with regard to commodity-based swaps of a registered trade repository shall be subject at any time to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission considers appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.''.

(b) DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, or a commodity-based swap, in each case unless the contract, option, or commodity-based swap is not required to be cleared under this Act.

''(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.'';

(2) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

''(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing the rules of the derivatives clearing organization and such other information and documents as the Commission, by rule, may prescribe as appropriate in the public interest or for the purpose of making the determinations required for approval under this section.'';

(B) in paragraph (2)—

(i) by striking subparagraph (B) and inserting the following:

''(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization and to manage all associated risks.''; and

(ii) by adding at the end the following:

''(O) MARKET PARTICIPANT ACCESS.—The applicant shall establish appropriate standards to ensure open and fair access to all persons that meet the ongoing and continuing participant eligibility standards of the organization with respect to commodity-based swaps and to accept for clearing from the participants all commodity-based swaps that meet the product eligibility standards of the organization, regardless of where the transactions are executed.''; and

(C) by adding at the end the following:

''(4) COMMISSION PROCEDURES FOR GRANTING REGISTRATION TO DERIVATIVES CLEARING ORGANIZATIONS FOR CLEARING COMMODITY-BASED SWAPS.—

''(A) IN GENERAL.—The Commission shall, on the filing of an application for registration pursuant to paragraph (2) for purposes of clearing commodity-based swaps, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning the application.

''(B) ACTIONS.—Not later than 90 days after the date of the publication of the notice (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant the registration; or

''(ii) institute proceedings to determine whether registration should be denied.

''(C) PROCEEDINGS.—

''(i) IN GENERAL.—The proceedings described in subparagraph (B)(ii) shall—

''(I) include notice of the grounds for denial under consideration and opportunity for hearing; and

''(II) be concluded not later than 180 days after the date of publication of notice of the filing of the application for registration.

''(ii) ACTIONS.—At the conclusion of the proceedings the Commission, by order, shall grant or deny the registration.

''(iii) EXTENSIONS.—The Commission may extend the time for the conclusion of the proceedings for—

''(I) not more than 60 days if the Commission—

''(aa) finds good cause for the extension; and

''(bb) publishes the reasons of the Commission for the finding; or

''(II) with the consent of the applicant, a longer period.

''(iv) STANDARD FOR REGISTRATION.—

''(I) IN GENERAL.—The Commission shall grant the registration of a derivatives clearing organization if the Commission finds that the derivatives clearing organization is so organized, and has the capacity, to be able—

''(aa) to ensure the prompt, accurate, and reliable performance of the functions of a derivatives clearing organization;

''(bb) to comply with this Act (including rules and regulations); and

''(cc) to carry out the functions of a derivatives clearing organization in a manner consistent with the purposes and core principles of this section.

''(II) DENIAL.—The Commission shall deny the registration of a derivatives clearing organization if the Commission does not make a finding described in subclause (I).

''(5) WITHDRAWAL OF REGISTRATION.—For purposes of clearing commodity-based swaps, a derivatives clearing organization may, on such terms and conditions as the Commission considers appropriate in the public interest or for the protection of market participants, withdraw from registration by filing a written notice of withdrawal with the Commission.

''(6) ACCESS TO DERIVATIVES CLEARING ORGANIZATION TO CLEAR COMMODITY-BASED SWAPS.—

''(A) NOTICE OF PROHIBITION OR LIMITATION.—

''(i) IN GENERAL.—For purposes of clearing commodity-based swaps, if any derivatives clearing organization prohibits or limits any person access to services offered, directly or indirectly, by the derivatives clearing organization, the derivatives clearing organization shall promptly file notice of the prohibition or denial with the Commission.

''(ii) CONTENTS.—The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as appropriate in the public interest.

''(B) REVIEW BY COMMISSION.—Any prohibition or limitation on access to services with respect to which a derivatives clearing organization is required by subparagraph (A) to file notice shall be subject to review by the Commission on—

''(i) the motion of the Commission; or

''(ii) application by any person aggrieved by the prohibition or limitation filed—

''(I) not later than 30 days after the date the notice described in subparagraph (A) has been filed with the Commission and received by the aggrieved person; or

''(II) within such longer period as the Commission may determine.

''(C) STAYS.—

''(i) IN GENERAL.—Application to the Commission for review, or the institution of review by the Commission on the motion of the Commission, shall not operate as a stay of the prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay.

''(ii) HEARING.—A hearing under clause (i) may consist solely of the submission of affidavits or presentation of oral arguments.

''(iii) EXPEDITED PROCEDURE.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

''(D) ACTIONS.—

''(i) DISMISSAL OF PROCEEDINGS.—For purposes of clearing commodity-based swaps, in any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a derivatives clearing organization, the Commission, by order, shall dismiss the proceeding if the Commission finds, after notice and opportunity for hearing, that—

''(I) the prohibition or limitation is consistent with this Act (including rules and regulations); and

''(II) the person has not been discriminated against unfairly.

''(ii) ACCESS TO SERVICES.—If the Commission does not make a finding described in clause (i), or if the Commission finds that the prohibition or limitation imposes any burden on competition not appropriate in furtherance of the purposes of this Act, the Commission, by order, shall—

''(I) set aside the prohibition or limitation; and

''(II) require the registered trade repository to permit the person access to the services offered by the derivatives clearing organization to which the prohibition or limitation applied.

''(7) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations on the activities, functions, or operations of any derivatives clearing organization that is clearing commodity-based swaps, or suspend for a period not exceeding 12 months or revoke the registration of any derivatives clearing organization, if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, suspension, or revocation is appropriate in the public interest and for the protection of market participants or otherwise in furtherance of the purposes of this Act; and

''(B) the derivatives clearing organization has violated or is unable to comply with any provision of this Act (including rules or regulations).

''(8) RULEMAKING AUTHORIZATION.—For purposes of clearing commodity-based swaps, no derivatives clearing organization shall, directly or indirectly, engage in any activity as a derivatives clearing organization in contravention of such rules and regulations as the Commission may prescribe—

''(A) as appropriate in the public interest;

''(B) for the protection of market participants; or

''(C) otherwise in furtherance of the purposes of this Act.

''(9) RECORDS, REPORTS, AND EXAMINATIONS.—

''(A) IN GENERAL.—Each derivatives clearing organization shall, for purposes of clearing commodity-based swaps, make and keep for prescribed periods such records, furnish such copies of the records, and make and disseminate such reports as the Commission, by rule, prescribes as appropriate in the public interest, or otherwise in furtherance of the purposes of this Act.

''(B) EXAMINATIONS.—For purposes of clearing commodity-based derivative instruments, all records of a derivatives clearing organization shall be subject at any time to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission considers appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.''.

SEC. 204. PRUDENTIAL SUPERVISION AND REGULATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS AND INCENTIVES FOR TRADING ON REGULATED EXCHANGES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 203(a)) the following:

''SEC. 4s. REGULATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) DEFINITION OF APPROPRIATE REGULATORY AUTHORITY.—In this section, the term 'appropriate regulatory authority' means—

''(1) the appropriate Federal banking agency (as defined in section 1813(q) of title 12, United States Code), with respect to a significant commodity-based derivatives market participant that is an insured depository institution (as defined in section 1813(c) of title 12, United States Code), but not an affiliate of an insured depository institution;

''(2) the Federal Housing Finance Agency, with respect to a significant commodity-based derivatives market participant that is a regulated entity (as defined in section 4502 of title 12, United States Code);

''(3) the Commission, with respect to a significant commodity-based derivatives market participant that is—

''(A) a futures commission merchant or an introducing broker, other than a futures commission merchant or an introducing broker registered pursuant to section 4f(a) or an affiliate of an insured depository institution; or

''(B) a commodity pool operator or commodity trading advisor, other than an affiliate of an insured depository institution; and

''(4) the Securities and Exchange Commission, with respect to a significant commodity-based derivatives market participant—

''(A) that is a broker or dealer, as those terms are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (other than a broker or dealer registered under section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) that is not an affiliate of an insured depository institution); or

''(B) for which there is not another appropriate regulatory authority otherwise specified in this subsection.

''(b) REGISTRATION BY SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.—It shall be unlawful for any significant commodity-based derivatives market participant to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce a transaction in, any commodity-based swap unless the significant commodity-based derivatives market participant has registered in accordance with subsection (c).

''(c) MANNER OF REGISTRATION OF SIGNIFICANT COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.—

''(1) IN GENERAL.—A significant commodity-based derivatives market participant subject to the registration requirement of subsection (b) may register by filing with the Commission an application for registration in such form and containing such information and documents concerning the significant commodity-based derivatives market participant and any persons associated with the significant commodity-based derivatives market participant as the Commission, by rule, regulation, or order, may prescribe as appropriate in the public interest or for the protection of market participants.

''(2) ACTION BY THE COMMISSION.—

''(A) IN GENERAL.—Not later than 45 days after the date of filing of an application under paragraph (1) (or, with the consent of the applicant, a longer period), the Commission shall—

''(i) by order grant registration; or

''(ii) institute proceedings in accordance with subparagraph (B) to determine whether the registration should be denied.

''(B) PROCEEDINGS.—

''(i) IN GENERAL.—Proceedings initiated under subparagraph (B)(ii) shall include notice of the grounds for denial under consideration and opportunity for hearing.

''(ii) CONCLUSION.—Not later than 120 days after the date of the filing of the application for registration, the Commission shall conclude the proceedings and, by order, grant or deny the registration.

''(iii) EXTENSION.—The Commission may extend the time for the conclusion of a proceedings for up to 90 days (or, with the consent of the applicant, a longer period) if the Commission finds good cause for the extension and publishes the reasons for the extension.

''(C) BASIS FOR DETERMINATION.—

''(i) IN GENERAL.—The Commission shall grant the registration of a significant commodity-based derivatives market participant if the Commission finds that the requirements of this section are satisfied.

''(ii) DENIAL.—The Commission shall deny the registration if the Commission does not make a finding under clause (i) or if the Commission finds that if the applicant were registered, the registration of the applicant would be subject to suspension or revocation under subsection (f).

''(3) WITHDRAWAL.—Any person that has filed an application pursuant to paragraph (1) may, on such terms and conditions as the Commission determines appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act, withdraw the application by filing a written withdrawal with the Commission.

''(d) BUSINESS CONDUCT REQUIREMENTS.—

''(1) DEFINITION OF REGULATED PERSON.—In this subsection, the term 'regulated person' means—

''(A) a significant commodity-based derivatives market participant; and

''(B) any other class of persons that the Commission may determine by rule, regulation, or order to be subject to this subsection.

''(2) PROHIBITION.—It shall be unlawful for any regulated person to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce a transaction in, any commodity-based swap, unless the regulated person complies with such business conduct requirements as the Commission and the Securities and Exchange Commission, in consultation with the appropriate regulatory authorities, may jointly prescribe by rule, regulation, or order, as appropriate in the public interest, for the protection of market participants, and otherwise in furtherance of the purposes of this Act.

''(3) REQUIREMENTS.—Business conduct requirements prescribed under this subsection shall—

''(A) establish the standard of care required for a regulated person to verify that any counterparty meets the eligibility standards for an eligible contract participant or qualified institutional buyer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)));

''(B) require disclosure by the regulated person to any counterparty to the transaction of—

''(i) material product-specific information about the risks and characteristics of the commodity-based swap;

''(ii) the source and amount of any fees or other material remuneration that the regulated person would directly or indirectly expect to receive in connection with the commodity-based swap; and

''(iii) any other material incentives or conflicts of interest that the regulated person may have in connection with the commodity-based swap;

''(C) establish a minimum standard of conduct for a regulated person with respect to any counterparty, other than a qualified institutional buyer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))), for—

''(i) providing disclosure of the general risks and characteristics of any commodity-based swap;

''(ii) communicating in a fair and balanced manner based on principles of fair dealing and good faith;

''(iii) assessing the appropriateness of any commodity-based swap for the counterparty, except that in the case of a counterparty that is an eligible contract participant specified in clause (iv), the regulated person may rely on the representations described in clause (iv)(VI) that the transaction is appropriate for the counterparty; and

''(iv) with respect to a counterparty that is an eligible contract participant (within the meaning of subclause (I) or (II) of section 1a(15)(A)(vii)), having a reasonable basis to believe that the counterparty has an independent representative that—

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

''(II) is not subject to a statutory disqualification;

''(III) is independent of the regulated person;

''(IV) undertakes a duty to act in the best interests of the counterparty that the independent representative represents;

''(V) makes appropriate disclosures; and

''(VI) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction;

''(D) require the availability of information about any commodity referenced in a commodity-based swap or on which the commodity-based swap is based; and

''(E) establish such other standards and requirements as the Commission, acting jointly with the Securities and Exchange Commission and in consultation with the appropriate regulatory authorities, may determine are appropriate in the public interest, for the protection of market participants, or otherwise in furtherance of the purposes of this Act.

''(e) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a significant commodity-based derivatives market participant to permit any associated person of the significant commodity-based derivatives market participant who is subject to a statutory disqualification to effect or be involved in effecting transactions in commodity-based swaps on behalf of the significant commodity-based derivatives market participant, if the significant commodity-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(f) ADMINISTRATIVE PROCEEDING AUTHORITY.—

''(1) IN GENERAL.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any significant commodity-based derivatives market participant that has registered with the Commission pursuant to subsection (d) if the Commission finds, on the record after notice and opportunity for hearing, that—

''(A) the censure, placing of limitations, or rejection is in the public interest; and

''(B) the significant commodity-based derivatives market participant, or any person associated with the significant commodity-based derivatives market participant effecting or involved in effecting transactions in commodity-based swaps on behalf of the significant commodity-based derivatives market participant, whether prior or subsequent to becoming so associated, has committed or omitted any act, or is subject to an order or finding, described in paragraphs (2) and (3) of section 8a.

''(2) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or who, at the time of the alleged misconduct, was associated or was seeking to become associated with a significant commodity-based derivatives market participant for the purpose of effecting or being involved in effecting commodity-based swaps on behalf of the significant commodity-based derivatives market participant, the Commission, by order, shall censure, place limitations on the activities or functions of the person, or suspend for a period not exceeding 12 months, or bar the person from being associated with a significant commodity-based derivatives market participant, if the Commission finds, on the record after notice and opportunity for a hearing, that—

''(A) the censure, placing of limitations, suspension, or bar is in the public interest; and

''(B) the person has committed or omitted any act, or is subject to an order or finding, described in paragraphs (2) and (3) of section 8a.

''(3) PROHIBITION.—It shall be unlawful—

''(A) for any person with respect to whom an order under paragraph (2) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a significant commodity-based derivatives market participant in contravention of the order; or

''(B) for any significant commodity-based derivatives market participant to permit a person described in subparagraph (A), without the consent of the Commission, to become or remain, a person associated with the significant commodity-based derivatives market participant in contravention of an order under paragraph (2), if the significant commodity-based derivatives market participant knew, or in the exercise of reasonable care should have known, of the order.

''(g) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) IN GENERAL.—It shall be unlawful for any person to conduct business as a significant commodity-based derivatives market participant unless the person meets at all times such minimum capital and margin requirements as the appropriate regulatory authorities shall jointly prescribe, not later than 180 days after the enactment of this section, by rule or regulation as appropriate in the public interest or for the maintenance of fair and orderly markets and consistent with the purposes of this Act to provide safeguards with respect to the financial responsibility and related practices of the significant commodity-based derivatives market participant.

''(2) CAPITAL REQUIREMENTS.—In setting capital requirements for significant commodity-based derivatives market participants, the appropriate regulatory authorities shall consider among other things—

''(A) the liquidity of each commodity-based swap, including whether the commodity-based swap—

''(i) is traded on a liquid market; and

''(ii) is centrally cleared; and

''(B) whether the commodity-based swap is used to offset or hedge another instrument or asset owned by such significant commodity-based derivatives market participant.

''(3) MARGIN REQUIREMENTS.—The appropriate regulatory authorities shall jointly prescribe margin requirements, which may permit the use of noncash collateral, that apply to commodity-based swaps entered into by a significant commodity-based derivatives market participant, as the appropriate regulatory authorities jointly determine to be appropriate for the purpose of, at a minimum—

''(A) preserving the financial integrity of markets trading commodity-based swaps; and

''(B) preventing systemic risk.

''(4) COMMISSION RULES.—Nothing in this Act prevents the Commission from prescribing capital and margin requirements that are higher or more restrictive than the joint rules adopted under this subsection for significant commodity-based derivatives market participants for which the Commission is the appropriate regulatory authority.

''(h) ENFORCEMENT AUTHORITY.—Each appropriate regulatory authority shall have sole authority to enforce compliance with the rules adopted under subsection (g) in the case of each significant derivatives market participant for which the regulatory authority is the appropriate regulatory authority, as defined in subsection (a).''.

SEC. 205. RECORDKEEPING AND REPORTING REQUIREMENTS FOR DERIVATIVES MARKET PARTICIPANTS.

(a) IN GENERAL.—Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended by striking ''SEC. 4g.'' and all that follows through the end of subsection (a) and inserting the following:

''SEC. 4g. RECORDKEEPING AND REPORTING REQUIREMENTS FOR COMMODITY-BASED DERIVATIVES MARKET PARTICIPANTS.

''(a) IN GENERAL.—Each person registered under this Act as a futures commission merchant, introducing broker, floor broker, floor trader, or significant commodity-based derivatives market participant (or any other person that engages in transactions in commodity-based swaps as the Commission, by rule, regulation or order, designates) shall—

''(1) make such reports as are required by the Commission regarding the transactions and positions of the person, and the transactions and positions of the customers of the person, in commodities for future delivery on any board of trade in the United States or elsewhere, in any significant price discovery contract traded or executed on an electronic trading facility, in any agreement, contract, or transaction that is treated by a derivatives clearing organization, whether registered or not registered, as fungible with a significant price discovery contract, and in any commodity-based swap;

''(2) keep books and records pertaining to those transactions and positions in such form and manner and for such period as may be required by the Commission; and

''(3) make those books and records available for inspection by any representative of the Commission or the Department of Justice.''.

(b) DAILY TRADING RECORD.—Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended—

(1) by striking subsections (c) and (d) and inserting the following:

''(c) DAILY TRADING RECORDS.—

''(1) IN GENERAL.—Each floor broker, introducing broker, futures commission merchant, significant commodity-based derivatives market participant, and any other person designated by the Commission pursuant to subsection (a) shall maintain daily trading records for each customer in such manner and form as to be identifiable with the trades referred to in subsection (b).

''(2) FORM AND REPORTS.—

''(A) IN GENERAL.—Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission.

''(B) REPORTS.—Reports shall be made from the records maintained at such time, in such manner, and at such places as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures or commodity-based swaps.''; and

(2) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 206. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) POSITION LIMITS.—

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

(A) by striking ''SEC. 4a. (a) Excessive'' and inserting the following:

''SEC. 4a. EXCESSIVE SPECULATION AS BURDEN ON INTERSTATE COMMERCE.

''(a) EXCESSIVE SPECULATION.—

''(1) IN GENERAL.—Excessive'';

(B) by designating the first through sixth sentences as paragraphs (1) through (6), respectively;

(C) in paragraph (1) (as so designated), by striking ''on electronic trading facilities with respect to a significant price discovery contract'' and inserting ''commodity-based swaps that perform or affect a significant price discovery function'';

(D) in paragraph (2) (as so designated)—

(i) by inserting '', including any group or class of traders,'' after ''held by any person''; and

(ii) by striking ''on an electronic trading facility with respect to a significant price discovery contract,'' and inserting ''commodity-based swaps that perform or affect a significant price discovery function,''; and

(E) by adding at the end the following:

''(7) AGGREGATE POSITION LIMITS AND POSITION REPORTING FOR COMMODITY-BASED SWAPS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on, or otherwise prescribe requirements regarding, the aggregate number of positions in commodity-based swaps based on the same underlying commodity that may be held by any person, including any group or class of traders, for each month across—

''(A) contracts listed by designated contract markets;

''(B) contracts traded on a foreign board of trade; and

''(C) commodity-based swaps that perform or affect a significant price discovery function.

''(8) CONSIDERATIONS.—In making a determination whether a commodity-based swap performs or affects a significant price discovery function, the Commission shall consider the extent to which the commodity-based swap has a significant price linkage, price discovery relationship, or other significant price relationship with 1 or more contracts listed by designated contract markets.

''(9) REPORTS.—The Commission may, by rule or regulation, require any person that effects transactions for the account of the person or the account of others in any commodity-based swap to report such information as the Commission may prescribe regarding any position or positions in the commodity-based swaps.

''(10) EXEMPTIONS.—The Commission, by rule or regulation, may conditionally or unconditionally exempt any person or class of persons, any commodity-based swap or class of commodity-based swaps, or any transaction or class of transactions from any requirement the Commission establishes under this section with respect to position limits for commodity-based swaps.''.

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

(A) in paragraph (1), by striking ''or electronic trading facility'' and inserting ''or 1 or more regulated electronic transparent trade execution systems''; and

(B) in paragraph (2), by striking ''or electronic trading facility'' and inserting ''or regulated electronic transparent trade execution system''.

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

(1) in subsection (a)—

(A) in paragraph (1), by striking ''or'' after the semicolon at the end;

(B) in paragraph (2)(D)(ii), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(3) for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, to effect any transaction in, or to induce or attempt to induce a transaction in, any commodity-based swap, in connection with which the person—

''(A) engages in any fraudulent, deceptive, or manipulative act or practice;

''(B) makes any fictitious quotation; or

''(C) engages in any transaction, practice, or course of business that operates as a fraud or deceit on any person.''; and

(2) in subsection (b)—

(A) by striking ''Subsection (a)(2) of this section'' and inserting the following:

''(1) IN GENERAL.—Subsection (a)(2)''; and

(B) by adding at the end the following:

''(2) COMMODITY-BASED SWAPS.—

''(A) IN GENERAL.—For the purposes of subsection (a)(3), the Commission shall, by rule, regulation, or order, define and prescribe means reasonably designed to prevent—

''(i) such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative; and

''(ii) such quotations as are fictitious.

''(B) REQUIREMENTS.—In adopting rules, regulations, or orders under subparagraph (A), the Commission shall—

''(i) consult with the Securities and Exchange Commission; and

''(ii) seek to maintain comparability of the rules, regulations, or orders with similar rules of the Securities and Exchange Commission.''.

SEC. 207. PROTECTIONS FOR MARKETING COMMODITY-BASED SWAPS TO CERTAIN PERSONS.

(a) DEFINITION OF ELIGIBLE CONTRACT PARTICIPANT.—Paragraph (15) of section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as redesignated by section 201(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i), by inserting ''(as defined in paragraph (18) as in effect on the date of enactment of the Comprehensive Derivatives Regulation Act of 2009)'' after ''financial institution'';

(B) in clause (iv)(I), by striking ''total assets'' and inserting ''total net assets'';

(C) in clause (v)—

(i) in subclause (I), by striking ''total assets exceeding $10,000,000'' and inserting ''total net assets exceeding $10,000,000; or'';

(ii) by striking subclause (II);

(iii) by redesignating subclause (III) as subclause (II); and

(iv) in item (aa) of subclause (II) (as so designated), by striking ''a net worth exceeding $1,000,000'' and inserting ''total net assets exceeding $5,000,000'';

(D) in clause (vii), by striking subclause (III) and the undesignated matter following that subclause and inserting the following:

''(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that the term does not include an entity, political subdivision, instrumentality, agency, or department described in subclause (I) or (III) unless the entity, political

subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, except that, with respect to any State or entity, political subdivision, agency or department of a State, that amount is exclusive of any proceeds from any offering of municipal securities;''; and

(E) by striking clause (xi) and inserting the following:

''(xi) an individual who—

''(I) owns and invests on a discretionary basis not less than $10,000,000;

''(II) owns and invests on a discretionary basis not less than $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual; or

''(III) is an officer or director of an entity (or a person performing similar functions) and who enters into the agreement, contract, or transaction in order to manage the risk associated with the securities of the entity owned by the individual at the time of entering into the agreement, contract, or transaction;''; and

(2) in subparagraph (C), by inserting ''by rule, jointly with the Securities and Exchange Commission,'' after ''determines''.

(b) LIMITATION ON PARTICIPATION IN COMMODITY-BASED SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 202(a)(2)(A)) is amended by adding at the end the following:

''(f) LIMITATION ON PARTICIPATION IN COMMODITY-BASED SWAPS.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a commodity-based swap.''.

SEC. 208. COMMODITY-BASED SWAP EXECUTION FACILITIES.

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

''SEC. 5h. COMMODITY-BASED SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—No person may operate a trading facility for commodity-based swaps, unless the trading facility is registered as a commodity-based swap execution facility under this section.

''(b) CRITERIA FOR REGISTRATION.—

''(1) IN GENERAL.—To be registered as a commodity-based swap execution facility, a facility shall demonstrate to the Commission that the facility meets the criteria specified in this section.

''(2) TRADING AND PARTICIPATION RULES.—The commodity-based swap execution facility shall—

''(A) establish and enforce trading and participation rules that will deter abuses; and

''(B) have the capacity to detect, investigate, and enforce the rules, including the capacity—

''(i) to obtain information necessary to perform the functions required under this section;

''(ii) to provide market participants with impartial access to the market; and

''(iii) to obtain information that may be used in establishing whether rule violations have occurred.

''(3) TRADING PROCEDURES.—The commodity-based swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders for commodity-based swaps on the facilities of the commodity-based swap execution facility.

''(4) FINANCIAL INTEGRITY.—The commodity-based swap execution facility shall establish and enforce rules and procedures to ensure the financial integrity of commodity-based swaps entered on or through the facilities of the commodity-based swap execution facility, including the clearance and settlement of commodity-based swaps pursuant to section 2(f).

''(c) PRINCIPLES FOR COMMODITY-BASED SWAP EXECUTION FACILITIES.—

''(1) COMPLIANCE.—

''(A) IN GENERAL.—To maintain registration as a commodity-based swap execution facility, the facility shall comply with the principles specified in this subsection.

''(B) DISCRETION.—Except in cases in which the Commission adopts rules or regulations pursuant to section 8a(5), the commodity-based swap execution facility shall have reasonable discretion in establishing the manner in which the facility complies with this subsection.

''(2) RULES.—The commodity-based swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including—

''(A) the terms and conditions of the commodity-based swaps traded on or through the facility; and

''(B) any limitations on access to the facility.

''(3) PREVENTION OF MANIPULATION.—

''(A) IN GENERAL.—The commodity-based swap execution facility shall permit trading only in commodity-based swaps that are not readily susceptible to manipulation.

''(B) MONITORING.—The commodity-based swap execution facility shall monitor trading in commodity-based swaps to prevent price manipulation, price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(4) POSITION LIMITATIONS AND ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, and to eliminate or prevent excessive speculation (as described in section 4a(a)), the commodity-based swap execution facility shall adopt for each of the contracts of the facility, as appropriate, position limitations or position accountability for speculators.

''(B) LIMITATION LEVEL.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the commodity-based derivative execution facility shall set the position limitations of the facility at a level that is not higher than the Commission limitation.

''(5) INFORMATION SHARING.—The commodity-based swap execution facility shall—

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

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

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

''(6) ACCESSIBILITY.—The commodity-based swap trade execution facility shall make public timely information on price, trading volume, and other trading data to the extent appropriate for commodity-based swaps.

''(7) MAINTENANCE OF RECORDS.—The commodity-based derivative instrument execution facility shall—

''(A) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of at least 5 years; and

''(B) submit to the Commission such reports as the Committee may require, at such time, in such manner, and containing such information as is determined by the Commission to be necessary for the Commission to perform the responsibilities of the Commission.

''(8) EMERGENCY AUTHORITY.—The commodity-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as appropriate, including the authority to suspend or curtail trading in a commodity-based swap.

''(9) CONFLICTS OF INTEREST.—The commodity-based derivative instrument execution facility shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the facility; and

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

''(d) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a commodity-based swap execution facility and uses the same electronic trade execution system for trading on the contract market and the commodity-based swap execution facility, identify whether the electronic trading is taking place on the contract market or the commodity-based swap execution facility.''.

SEC. 209. ENFORCEMENT.

Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) (as amended by section 202(b)(1)(I)) is amended by adding at the end the following:

''(h) ENFORCEMENT OF PROVISIONS APPLICABLE TO DERIVATIVES MARKET PARTICIPANTS.—

''(1) DEFINITION OF APPLICABLE PROVISION.—In this subsection, the term 'applicable provision' means any of section 4a(a), subsections (a), (c), and (d) of section 4g, sections 4r and 4s, and subsections (a) through (c)(1), (2), and (4) of section 5b.

''(2) ENFORCEMENT BY OTHER AGENCIES.—In addition to enforcement by the Commission under this Act of compliance with applicable provisions, to the extent applicable to commodity-based swaps, such compliance shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the appropriate Federal banking agency, in the case of an insured depository institution, as those terms are defined in section 3 of that Act (12 U.S.C. 1813), but not an affiliate of such an insured depository institution;

''(B) the securities laws, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), by the Securities and Exchange Commission, in the case of—

''(i) a broker or dealer, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (other than a broker or dealer registered under section 15(b)(11) of that Act (15 U.S.C. 78o(b)(11)) that is not an affiliate of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

''(ii) an investment adviser, as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));

''(iii) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

''(iv) any other entity for which the Securities and Exchange Commission is a primary regulator;

''(v) any affiliate of an insured depository institution; or

''(vi) any other person that is not—

''(I) a futures commission merchant or an introducing broker (except a futures commission merchant or an introducing broker registered pursuant to section 4f(a) of this Act or an affiliate of an insured depository institution);

''(II) a commodity pool operator or commodity trading advisor (except an affiliate of an insured depository institution); or

''(III) a person specified in subparagraph (A) or (C); and

''(C) the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 et seq.), by the Federal Housing Finance Agency, in the case of a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

''(3) VIOLATIONS TREATED AS VIOLATIONS OF OTHER LAWS.—

''(A) IN GENERAL.—For purposes of the exercise by any agency referred to in paragraph (2) of the powers of the agency under any provision of law referred to in that paragraph, a violation of any applicable provision, as the provision applies to commodity-based swaps, shall be considered to be a violation of a requirement imposed under that provision of law.

''(B) ADDITIONAL AUTHORITY.—In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with applicable provisions, as the applicable provisions apply to commodity-based swaps, any other authority conferred on the agency by law.''.

SEC. 210. ENFORCEABILITY OF COMMODITY-BASED SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction that is a commodity-based swap shall be void, voidable, or unenforceable by either party to the commodity-based swap, and no party to the commodity-based swap shall be entitled to rescind, or recover any payment made with respect to, the commodity-based swap under this section or any other provision of this Act based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under section 4a(a), subsections (a), (c), and (d) of section 4g, sections 4r and 4s, and subsections (a) through (c)(1), (2), and (4) of section 5b with respect to the commodity-based swap.''.

TITLE III—OTHER PROVISIONS

SEC. 301. MARGINING AND OTHER RISK MANAGEMENT STANDARDS FOR CENTRAL COUNTERPARTIES.

(a) AGENCY ACTIONS.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall each promulgate rules requiring each clearing agency (as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23))) and derivatives clearing organization (as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13))) to have robust risk management controls, including risk margin collateral requirements, to assure the ability to meet their settlement obligations.

(b) CONSULTATION REQUIRED.—To assure regulation of risk management controls, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall consult with each other and the Board of Governors of the Federal Reserve System, shall seek to maintain comparability of such rules, and shall give consideration to the recommendations of the Board of Governors of the Federal Reserve System before adopting rules under this section.

SEC. 302. DETERMINING THE STATUS OF SWAPS.

(a) PROCESS FOR DETERMINING THE STATUS OF A SWAP.—

(1) RULEMAKING.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly issue rules establishing a process for resolving any disagreement between the agencies regarding the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative.

(2) CONTENT.—The rules adopted under this section shall—

(A) include a method for determining the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative within 90 days after the date of the commencement of the determination process; and

(B) require the agencies to consider, in making such determination, the nature of the derivative, the extent to which the derivative is economically similar to instruments that are subject to regulation by the Securities and Exchange Commission or the Commodity Futures Trading Commission, the appropriateness of regulation of the derivative under either the securities laws or the Commodity Exchange Act, and such other factors as the Securities and Exchange Commission and the Commodity Futures Trading Commission may prescribe.

(b) JUDICIAL RESOLUTION.—

(1) IN GENERAL.—If the Securities and Exchange Commission and the Commodity Futures Trading Commission are unable to determine the status of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative pursuant to the process established in subsection (a), either agency may petition the United States Court of Appeals for the District of Columbia Circuit for a determination of the status of the derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative.

(2) EXPEDITED REVIEW.—The United States Court of Appeals for the District of Columbia Circuit shall complete all action on a petition filed in accordance with paragraph (1), including rendering a final determination of the status of the derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(3) STANDARD OF REVIEW.—The court shall determine the status of a new derivative instrument as either a security-based derivative, a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative, based upon the factors described in subsection (a)(2), giving deference neither to the views of the Securities and Exchange Commission nor the Commodity Futures Trading Commission.

(4) SUPREME COURT REVIEW.—Any request for certiorari to the Supreme Court of the United States of any determination of the United States Court of Appeals for the District of Columbia Circuit with respect to a petition for review under this subsection shall be filed with the Supreme Court of the United States as soon as practicable after such determination is made.

(5) JUDICIAL STAY.—The filing of a petition pursuant to paragraph (1) shall operate as a judicial stay of the identification of a derivative as a security-based swap, a commodity-based swap, a security derivative, or a commodity derivative until the date on which the determination of the court is final, including any appeal of such determination.

SEC. 303. STUDY AND REPORT ON IMPLEMENTATION.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of—

(1) how the Commodity Futures Trading Commission and the Securities and Exchange Commission have implemented this Act and the amendments made by this Act;

(2) the extent to which jurisdictional disputes have created challenges in the process of implementing this Act and the amendments made by this Act; and

(3) the benefits and drawbacks of harmonizing laws implemented by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and merging those agencies.

(b) REPORT REQUIRED.—Not later than 1 year after the date on which all rules are issued under section 304, the Comptroller General shall submit a report on the results of the study required by this section to Congress, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

SEC. 304. RULEMAKING.

The Securities and Exchange Commission, the Commodity Futures Trading Commission, and the appropriate regulatory authorities (as that term is defined in section 15F(g) of the Securities Exchange Act of 1934, as added by this Act, or section 4s(a) of the Commodity Exchange Act, as added by this Act), as applicable, shall issue rules under sections 15F(b), 15F(c), 15F(f), 17(l), 17C(c)(2), and 17C(d)(2) of the Securities Exchange Act of 1934 (as added by this Act), sections 4r(c)(2), 4r(d)(2), 4s(c), 4s(d), and 4s(g) of the Commodity Exchange Act (as added by this Act), and sections 301 and 302 of this Act, not later than 180 days after the date of enactment of this Act.

SEC. 305. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or as specifically provided in the amendments made by this Act, this Act and the amendments made by this Act, shall become effective on the date of enactment of this Act.

(b) OTHER EFFECTIVE DATES.—The amendments made by sections 102(b) and 202(b) of this Act and the provisions of section 15F(a) of the Securities Exchange Act of 1934 (as added by this Act) and section 4s(b) of the Commodity Exchange Act (as added by this Act) shall become effective 6 months after the date of enactment of this Act.

By Mr. LEAHY (for himself, Mr. CARDIN, and Mr. KAUFMAN):

S. 1692. A bill to extend the sunset of certain provisions of the USA PATRIOT Act and the authority to issue national security letters, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, security and liberty are both essential in our free society. Benjamin Franklin wrote: ''Those who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.'' I have been mindful of this since the devastating attacks of September 11, and each time we have considered the USA PATRIOT Act. The American people of today and those of tomorrow—our children and grandchildren—depend on us to do our best to ensure both security and the preservation of our essential liberties.

After September 11, the Government's power to gather information about those suspected of, or connected to, potential terrorists increased. Because such surveillance may, sometimes by mistake, sweep in U.S. citizens, we must vigilantly monitor these laws to ensure that they are implemented appropriately. This calls for public, judicial and congressional oversight to make sure we maintain the proper respect for security and liberty.

After September 11, I introduced the USA PATRIOT Act, Patriot Act, to give the Government the tools needed to defend this country and aggressively pursue those who would do us harm. Even in those dark days, I insisted on oversight. Working with the then House Majority Leader, Republican Dick Armey, we included sunsets for some of the provisions of the bill that had the greatest potential to directly affect Americans.

We debated the reauthorization of the Patriot Act for several months in 2005 and 2006. I again fought to protect the civil liberties and constitutional rights of Americans. Unfortunately, after a series of short extensions, the reauthorization of 2006 lacked sufficient constitutional protections over the vast authorities it granted to the Government. I had worked to secure increased oversight and to include new sunsets in the bill.

With those sunsets expiring on December 31, 2009, we must once again consider the Patriot Act. Three provisions of the Patriot Act are slated to expire at the end of this year, including the authorization for roving wiretaps, the ''lone wolf'' measure, and orders for tangible things, commonly referred to as the ''library'' provision.

In March, I sent Attorney General Holder a letter requesting the administration's views on these expiring provisions. I reiterated that request at a Senate Judiciary Committee oversight hearing in June. I have recently received a letter from the Attorney General urging us to extend the expiring authorities. I appreciate the President and the Attorney General's emphasis on accountability and checks and balances, and their willingness to consider additional ideas.

Today I am introducing a bill with Senators CARDIN and KAUFMAN that does just that. It will extend the authorization of the three expiring provisions. The bill also updates checks and balances by increasing judicial review of the use of Government powers that capture information on U.S. citizens, and augments congressional oversight. We propose increasing Government accountability through more transparent public reporting of the use of surveillance, and by requiring audits of how these vast authorities have been used since they were last reauthorized. In addition, we propose that, given their extensive use abuse and intrusiveness, we include a sunset for National Security Letters, NSLs. I introduced a bill in 2006, after the most recent Patriot Act reauthorization, to impose a sunset on NSLs. This sunset provision, combined with a comprehensive audit by the Inspector General, will help to hold the Federal Bureau of Investigation, FBI, accountable in its use of this authority.

In developing this bill, I worked closely with Senators FEINGOLD and DURBIN to protect the rights and privacy of Americans, and to expand oversight. Senators FEINGOLD and DURBIN have worked tirelessly over the years to protect the civil liberties of Americans, from the first debate over the Patriot Act in 2001, to the reauthorization in 2006, to the FISA Amendments Act enacted last year. I am pleased that Senators CARDIN, KAUFMAN and I have adopted some of the concepts they proposed in the SAFE Act of 2005, and that were included in the broader Patriot Act reauthorization bill they introduced last week, the JUSTICE Act.

I have long been concerned over the issuance and oversight of NSLs. National Security Letters are, in effect, a form of administrative subpoena. They do not require approval by a court, grand jury, or prosecutor. They are issued in secret, with recipients silenced, under penalty of law. Yet NSLs allow the Government to collect sensitive information, such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I noted that, with no real limits imposed by Congress, the FBI could store this information electronically and use it for large-scale, data-mining operations. We now know that the NSL authority was significantly misused. In 2008 the Department of Justice Inspector General issued a report on the FBI's use of NSLs revealing serious over-collection of information and abuse of the NSL authority.

We should reconsider the breadth of the NSL authority. This bill would also impose more judicial oversight and higher standards on the issuance of NSLs. It would require the FBI to include a statement of facts articulating why the information it is seeking is relevant to an authorized investigation.

The bill also addresses the constitutional deficiency recently identified by the Second Circuit Court of appeals in Doe v. Musasey. The Second Circuit found that the nondisclosure, or ''gag orders,'' issued under NSLs are a constitutional infringement. I have long maintained that position. The bill establishes a procedure whereby the recipient of an NSL has 21 days to notify the Government that it wishes to challenge the nondisclosure requirement. The Government then has 21 additional days to apply for a court order to compel compliance with the nondisclosure requirement. This scheme corrects the constitutional defects found by the Second Circuit. The bill would shift the burden of defending the need for a gag order to the Government. This bill also eliminates the NSL nondisclosure provision that allows the Government to ensure itself of victory by certifying that, in its view, disclosure ''may'' endanger national security or ''may'' interfere with diplomatic relations. The bill further strengthens judicial review of nondisclosure or ''gag orders'' associated with NSLs by imposing a one-year limitation on such orders. To protect on-going law enforcement investigations, it permits renewals of the nondisclosure orders in appropriate cases.

The power of the government to collect records for tangible things under Section 215 of the original Patriot Act, commonly referred to as the ''library records'' provision, is another authority that I worked to reform during the last reauthorization. It is time to redefine the way we describe this authority to accurately reflect the broad scope of information it allows the government to collect. Section 215 allows the FISA court to secretly require any entity to produce any document or other tangible thing with a minimal standard of relevance and a presumption in favor of the Government's showing of relevance. This bill correctly identifies Section 215 orders as orders for ''tangible things'' as opposed to only for ''business records'' as it is in current law.

This bill adopts the reasonable constitutional standard that I supported in 2006 for 215 orders. First, it would eliminate the presumption in favor of the government's assertion that the records it is seeking are relevant to its investigation. This bill would require the Government to make a connection between the records or other things it seeks and a suspected terrorist or spy before it is able to obtain confidential records such as library, medical and telephone records. Section 215 orders for tangible things permit the Government to collect an even broader scope of information than NSLs. For that reason, it is critical that the Government show that the records it seeks are both relevant to an investigation and connected to at least a suspected terrorist or spy.

This bill would also establish more meaningful judicial review of Section 215 orders. First, it repeals the requirement in current law that requires a recipient of a Section 215 nondisclosure order to wait for a full year before challenging that gag order. There is no justification for this mandatory waiting period for judicial review, and this bill eliminates it. It also repeals a provision added to the law in 2006 stating that a conclusive presumption in favor of the Government shall apply where a high level official certifies that disclosure of the order for tangible things would endanger national security or interfere with diplomatic relations. These restraints on meaningful judicial review are unfair, unjustified, and completely unacceptable. I fought hard to keep these two provisions out of the 2006 reauthorization, but the Republican majority at that time insisted they be included.

This bill will strengthen court oversight of Section 215 orders by requiring court oversight of minimization procedures when information concerning a U.S. person is acquired, retained, or disseminated. Requiring FISA Court approval of minimization procedures would simply bring Section 215 orders in line with other FISA authorities—such as wiretaps, physical searches,

and pen register and trap and trace devices—that already require FISA court approval of minimization procedures. This is another common sense modification to the law that was drafted in consultation with Senators FEINGOLD and DURBIN. If we are to allow personal information to be collected in secret, the court must be more involved in making sure the authorities are used responsibly and that Americans' information and personal privacy are protected.

Finally, this bill addresses concerns over the use of pen register or trap and trace devices ''pen/trap''. The bill raises the standard for pen/trap in the same manner as it raises the standard for Section 215 orders. The Government would be required to show that the information it seeks is both relevant to an investigation and connected to a suspected terrorist or spy. This section also requires court review of minimization procedures, which are not required under current law, and adds an Inspector General audit of the use of pen/trap that is modeled on the the audits of Section 215 orders and NSLs.

I look forward to working with the members of the Judiciary Committee, the Senate, the House and with the administration as this bill moves forward, and I welcome the views of others.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1692

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''USA PATRIOT Act Sunset Extension Act of 2009''.

SEC. 2. SUNSETS.

(a) SECTIONS 206 AND 215 SUNSET.—

(1) IN GENERAL.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is amended by striking ''2009'' and inserting ''2013''.

(2) CONFORMING AMENDMENTS.—

(A) IN GENERAL.—Section 601(a)(1)(D) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)(D)) is amended by striking ''section 501;'' and inserting ''section 502 or under section 501 pursuant to section 102(b)(2) the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);''.

(B) APPLICATION UNDER SECTION 404 OF THE FISA AMENDMENTS ACT OF 2008.—Section 404(b)(4)(A) of the FISA Amendments Act of 2008 (Public Law 110–261; 122 Stat. 2477) is amended by striking the period at the end and inserting '', except that paragraph (1)(D) of such section 601(a) shall be applied as if it read as follows:

'(D) access to records under section 502 or under section 501 pursuant to section 102(b)(2) the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 50 U.S.C. 1861 note);'.''.

(C) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

(b) EXTENSION OF SUNSET RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.—

(1) IN GENERAL.—Section 6001(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 50 U.S.C. 1801 note) is amended to read as follows:

''(b) SUNSET.—

''(1) REPEAL.—Subparagraph (C) of section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)), as added by subsection (a), is repealed effective December 31, 2013.

''(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), subparagraph (C) of section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) shall continue to apply after December 31, 2013 with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential offense that began or occurred before December 31, 2013.''.

(2) CONFORMING AMENDMENT.—

(A) IN GENERAL.—Section 601(a)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(2)) is amended by striking the semicolon at the end and inserting ''pursuant to subsection (b)(2) of section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 50 U.S.C. 1801 note);''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on December 31, 2013.

(c) NATIONAL SECURITY LETTERS.—

(1) IN GENERAL.—Effective on December 31, 2013, the following provisions of law are repealed:

(A) Section 2709 of title 18, United States Code.

(B) Section 1114(a)(5) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)).

(C) Subsections (a) and (b) of section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u).

(D) Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v).

(E) Section 802 of the National Security Act of 1947 (50 U.S.C. 436).

(2) TRANSITION PROVISION.—Notwithstanding paragraph (1), the provisions of law referred to in paragraph (1) shall continue to apply after December 31, 2013 with respect to any particular foreign intelligence investigation or with respect to any particular offense or potential offense that began or occurred before December 31, 2013.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) TITLE 18.—Title 18, United States Code, is amended—

(i) in the table of sections for chapter 121, by striking the item relating to section 2709;

(ii) by striking section 3511; and

(iii) in the table of sections for chapter 223, by striking the item relating to section 3511.

(B) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681) is amended—

(i) in section 626 (15 U.S.C. 1681u)—

(I) in subsection (d)(1), by striking ''the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c)'' and inserting ''a consumer report respecting any consumer under subsection (c)'';

(II) in subsection (h)(1), by striking ''subsections (a), (b), and (c)'' and inserting ''subsection (c)''; and

(ii) in the table of sections, by striking the item relating to section 627.

(C) NATIONAL SECURITY ACT OF 1947.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended—

(i) in section 507(b) (50 U.S.C. 415b(b))—

(I) by striking paragraph (5); and

(II) by redesignating paragraph (6) as paragraph (5); and

(ii) in the table of contents, by striking the item relating to section 802.

(D) EFFECTIVE DATE.—The amendments made by this paragraph shall take effect on December 31, 2013.

SEC. 3. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS FOR ACCESS TO TANGIBLE THINGS.

(a) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended—

(1) in the section heading, by striking ''certain business records'' and inserting ''tangible things'';

(2) in subsection (b)(2), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a statement of facts showing that there are reasonable grounds to believe that the records or other things sought—

''(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

''(ii)(I) pertain to a foreign power or an agent of a foreign power;

''(II) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

''(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; and

''(B) a statement of proposed minimization procedures.''; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting ''and that the proposed minimization procedures meet the definition of minimization procedures under subsection (g)'' after ''subsections (a) and (b)''; and

(ii) by striking the second sentence; and

(B) in paragraph (2)—

(i) in subparagraph (D), by striking ''and'' at the end;

(ii) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(F) shall direct that the minimization procedures be followed.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE HEADING.—Title V of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is amended in the title heading by striking ''CERTAIN BUSINESS RECORDS'' and inserting ''TANGIBLE THINGS''.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to title V and section 501 and inserting the following:

''TITLE V—ACCESS TO TANGIBLE THINGS FOR FOREIGN INTELLIGENCE PURPOSES

''Sec. 501. Access to tangible things for foreign intelligence purposes and international terrorism investigations.''.

SEC. 4. FACTUAL BASIS FOR AND ISSUANCE OF ORDERS FOR PEN REGISTERS AND TRAP AND TRACE DEVICES FOR FOREIGN INTELLIGENCE PURPOSES.

(a) IN GENERAL.—

(1) APPLICATION.—Section 402(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842(c)) is amended—

(A) in paragraph (1), by striking ''and'' at the end; and

(B) by striking paragraph (2) and inserting the following:

''(2) a statement of facts showing that there are reasonable grounds to believe that the information likely to be obtained—

''(A) is relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(1) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

''(B)(i) pertains to a foreign power or an agent of a foreign power;

''(ii) is relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

''(iii) pertains to an individual in contact with, or known to, a suspected agent of a foreign power; and

''(3) a statement of proposed minimization procedures.''.

(2) MINIMIZATION.—

(A) DEFINITION.—Section 401 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841) is amended by adding at the end the following:

''(4) The term 'minimization procedures' means—

''(A) specific procedures that are reasonably designed in light of the purpose and technique of an order for the installation and use of a pen register or trap and trace device, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

''(B) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in section 101(e)(1), shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance; and

''(C) notwithstanding subparagraphs (A) and (B), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes.''.

(B) PEN REGISTERS AND TRAP AND TRACE DEVICES.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(i) in subsection (d)—

(I) in paragraph (1), by inserting '', and that the proposed minimization procedures meet the definition of minimization procedures under this title'' before the period at the end; and

(II) in paragraph (2)(B)—

(aa) in clause (ii)(II), by striking ''and'' after the semicolon; and

(bb) by adding at the end the following:

''(iv) the minimization procedures be followed; and''; and

(ii) by adding at the end the following:

''(h) At or before the end of the period of time for which the installation and use of a pen register or trap and trace device is approved under an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

(C) EMERGENCIES.—Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(i) by redesignating subsection (c) as (d); and

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

''(c) If the Attorney General authorizes the emergency installation and use of a pen register or trap and trace device under this section, the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.''.

(D) USE OF INFORMATION.—Section 405(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1845(a)) is amended by striking ''provisions of'' and inserting ''minimization procedures required under''.

SEC. 5. LIMITATIONS ON DISCLOSURE OF NATIONAL SECURITY LETTERS.

(a) IN GENERAL.—Section 2709 of title 18, United States Code, is amended by striking subsection (c) and inserting the following:

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A wire or electronic communication service provider, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A wire or electronic communications service provider that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of this title.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the wire or electronic service provider, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(b) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended by striking subsection (d) and inserting the following:

''(d) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no consumer reporting agency, or officer, employee, or agent thereof, that receives a request or order under subsection (a), (b), or (c), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A consumer reporting agency, or officer, employee, or agent thereof, that receives a request or order under subsection (a), (b), or (c) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request or order;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request or order; or

''(iii) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request or order is issued under subsection (a), (b), or (c) in the same manner as the person to whom the request or order is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request or order that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A consumer reporting agency that receives a request or order under subsection (a), (b), or (c) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request or order under subsection (a), (b), or (c) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request or order.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request or order under subsection (a), (b), or (c) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(c) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.—Section 627 of the Fair Credit Reporting Act (15 U.S.C. 1681v) is amended by striking subsection (c) and inserting the following:

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no consumer reporting agency, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A consumer reporting agency, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the head of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee.

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The head of a government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism, or a designee, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A consumer reporting agency that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the government agency authorized to conduct investigations of intelligence or counterintelligence activities or analysis related to international terrorism shall promptly notify the consumer reporting agency, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(d) FINANCIAL RECORDS.—Section 1114(a)(5) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)) is amended by striking subparagraph (D) and inserting the following:

''(D) PROHIBITION OF CERTAIN DISCLOSURE.—

''(i) PROHIBITION.—

''(I) IN GENERAL.—If a certification is issued under subclause (II) and notice of the right to judicial review under clause (iv) is provided, no financial institution, or officer, employee, or agent thereof, that receives a request under subparagraph (A), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(II) CERTIFICATION.—The requirements of subclause (I) shall apply if the Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office, certifies that, absent a prohibition of disclosure under this subparagraph, there may result—

''(aa) a danger to the national security of the United States;

''(bb) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(cc) interference with diplomatic relations; or

''(dd) danger to the life or physical safety of any person.

''(ii) EXCEPTION.—

''(I) IN GENERAL.—A financial institution, or officer, employee, or agent thereof, that receives a request under subparagraph (A) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(aa) those persons to whom disclosure is necessary in order to comply with the request;

''(bb) an attorney in order to obtain legal advice or assistance regarding the request; or

''(cc) other persons as permitted by the Director of the Federal Bureau of Investigation or the designee of the Director.

''(II) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subclause (I) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subparagraph (A) in the same manner as the person to whom the request is issued.

''(III) NOTICE.—Any recipient that discloses to a person described in subclause (I) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(iii) EXTENSION.—The Director of the Federal Bureau of Investigation, or a designee of the Director whose rank shall be no lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office, may extend a nondisclosure requirement for additional periods

of not longer than 1 year if, at the time of each extension, a new certification is made under clause (i)(II) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(iv) RIGHT TO JUDICIAL REVIEW.—

''(I) IN GENERAL.—A financial institution that receives a request under subparagraph (A) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(II) TIMING.—

''(aa) IN GENERAL.—A request under subparagraph (A) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(bb) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under clause (iii) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(III) INITIATION OF PROCEEDINGS.—If a recipient of a request under subparagraph (A) makes a notification under subclause (II), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(v) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the Federal Bureau of Investigation shall promptly notify the financial institution, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES.—Section 802 of the National Security Act of 1947 (50 U.S.C. 436), is amended by striking subsection (b) and inserting the following:

''(b) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) PROHIBITION.—

''(A) IN GENERAL.—If a certification is issued under subparagraph (B) and notice of the right to judicial review under paragraph (4) is provided, no governmental or private entity, or officer, employee, or agent thereof, that receives a request under subsection (a), shall disclose to any person the particular information specified in the certification during the time period to which the certification applies, which may be not longer than 1 year.

''(B) CERTIFICATION.—The requirements of subparagraph (A) shall apply if the head of an authorized investigative agency described in subsection (a), or a designee, certifies that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person.

''(2) EXCEPTION.—

''(A) IN GENERAL.—A governmental or private entity, or officer, employee, or agent thereof, that receives a request under subsection (a) may disclose information otherwise subject to any applicable nondisclosure requirement to—

''(i) those persons to whom disclosure is necessary in order to comply with the request;

''(ii) an attorney in order to obtain legal advice or assistance regarding the request; or

''(iii) other persons as permitted by the head of the authorized investigative agency described in subsection (a).

''(B) NONDISCLOSURE REQUIREMENT.—A person to whom disclosure is made under subparagraph (A) shall be subject to the nondisclosure requirements applicable to a person to whom a request is issued under subsection (a) in the same manner as the person to whom the request is issued.

''(C) NOTICE.—Any recipient that discloses to a person described in subparagraph (A) information otherwise subject to a nondisclosure requirement shall inform the person of the applicable nondisclosure requirement.

''(3) EXTENSION.—The head of an authorized investigative agency described in subsection (a), or a designee, may extend a nondisclosure requirement for additional periods of not longer than 1 year if, at the time of each extension, a new certification is made under paragraph (1)(B) and notice is provided to the recipient of the applicable request that the nondisclosure requirement has been extended and the recipient has the right to judicial review of the nondisclosure requirement.

''(4) RIGHT TO JUDICIAL REVIEW.—

''(A) IN GENERAL.—A governmental or private entity that receives a request under subsection (a) shall have the right to judicial review of any applicable nondisclosure requirement and any extension thereof.

''(B) TIMING.—

''(i) IN GENERAL.—A request under subsection (a) shall state that if the recipient wishes to have a court review a nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the request.

''(ii) EXTENSION.—A notice that the applicable nondisclosure requirement has been extended under paragraph (3) shall state that if the recipient wishes to have a court review the nondisclosure requirement, the recipient shall notify the Government not later than 21 days after the date of receipt of the notice.

''(C) INITIATION OF PROCEEDINGS.—If a recipient of a request under subsection (a) makes a notification under subparagraph (B), the Government shall initiate judicial review under the procedures established in section 3511 of title 18, United States Code.

''(5) TERMINATION.—If the facts supporting a nondisclosure requirement cease to exist prior to the applicable time period of the nondisclosure requirement, an appropriate official of the authorized investigative agency described in subsection (a) shall promptly notify the governmental or private entity, or officer, employee, or agent thereof, subject to the nondisclosure requirement that the nondisclosure requirement is no longer in effect.''.

SEC. 6. JUDICIAL REVIEW OF FISA ORDERS AND NATIONAL SECURITY LETTERS.

(a) FISA.—Section 501(f)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(f)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)—

(i) by striking ''a production order'' and inserting ''a production order or nondisclosure order''; and

(ii) by striking ''Not less than 1 year'' and all that follows;

(B) in clause (ii), by striking ''production order or nondisclosure''; and

(2) in subparagraph (C)—

(A) by striking clause (ii); and

(B) by redesignating clause (iii) as clause (ii).

(b) JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.—Section 3511(b) of title 18, United States Code, is amended to read as follows:

''(b) NONDISCLOSURE.—

''(1) IN GENERAL.—

''(A) NOTICE.—If a recipient of a request or order for a report, records, or other information under section 2709 of this title, section 626 or 627 of the Fair Credit Reporting Act (15 U.S.C. 1681u and 1681v), section 1114 of the Right to Financial Privacy Act (12 U.S.C. 3414), or section 802 of the National Security Act of 1947 (50 U.S.C. 436), wishes to have a court review a nondisclosure requirement imposed in connection with the request, the recipient shall notify the Government not later than 21 days after the date of receipt of the request or of notice that an applicable nondisclosure requirement has been extended.

''(B) APPLICATION.—Not later than 21 days after the date of receipt of a notification under subparagraph (A), the Government shall apply for an order prohibiting the disclosure of particular information about the existence or contents of the relevant request or order. An application under this subparagraph may be filed in the district court of the United States for any district within which the authorized investigation that is the basis for the request or order is being conducted. The applicable nondisclosure requirement shall remain in effect during the pendency of proceedings relating to the requirement.

''(C) CONSIDERATION.—A district court of the United States that receives an application under subparagraph (B) should rule expeditiously, and may issue a nondisclosure order for a period of not longer than 1 year, unless the facts justify a longer period of nondisclosure.

''(D) DENIAL.—If a district court of the United States rejects an application for a nondisclosure order or extension thereof, the nondisclosure requirement shall no longer be in effect.

''(2) APPLICATION CONTENTS.—An application for a nondisclosure order or extension thereof under this subsection shall include—

''(A) a statement of the facts indicating that, absent a prohibition of disclosure under this subsection, there may result—

''(i) a danger to the national security of the United States;

''(ii) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(iii) interference with diplomatic relations; or

''(iv) danger to the life or physical safety of any person; and

''(B) the time period during which the Government believes the nondisclosure requirement should apply.

''(3) STANDARD.—A district court of the United States may issue a nondisclosure requirement order or extension thereof under this subsection if the court determines that there is reason to believe that disclosure of the information subject to the nondisclosure requirement during the applicable time period will result in—

''(A) a danger to the national security of the United States;

''(B) interference with a criminal, counterterrorism, or counterintelligence investigation;

''(C) interference with diplomatic relations; or

''(D) danger to the life or physical safety of any person.

''(4) RENEWAL.—A nondisclosure order under this subsection may be renewed for additional periods of not longer than 1 year, unless the facts of the case justify a longer period of nondisclosure, upon submission of an application meeting the requirements of

paragraph (2), and a determination by the court that the circumstances described in paragraph (3) continue to exist.''.

(c) MINIMIZATION.—Section 501(g) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(g)) is amended—

(1) in paragraph (1), by striking ''Not later than'' and all that follows and inserting ''At or before the end of the period of time for the production of tangible things under an order approved under this section or at any time after the production of tangible things under an order approved under this section, a judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''; and

(2) in paragraph (2)(A), by inserting ''acquisition and'' after ''to minimize the''.

SEC. 7. CERTIFICATION FOR ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.

(a) IN GENERAL.—Section 2709(b)(1) of title 18, United States Code, is amended—

(1) by striking ''certifies in writing'' and inserting ''provides a written certification by the Director (or a designee)''; and

(2) by inserting ''that includes a statement of facts showing that there are reasonable grounds to believe'' before ''that the name,''.

(b) IDENTITY OF FINANCIAL INSTITUTIONS AND CREDIT REPORTS.—Section 626 of the Fair Credit Reporting Act (15 U.S.C. 1681u) is amended—

(1) in subsection (a), by striking ''has determined in writing, that such information is sought for'' and inserting ''provides to the consumer reporting agency a written determination that includes a statement of facts showing that there are reasonable grounds to believe that such information is relevant to''; and

(2) in subsection (b), by striking ''has determined in writing that such information is sought for'' and inserting ''provides to the consumer reporting agency a written determination that includes a statement of facts showing that there are reasonable grounds to believe that such information is relevant to''.

(c) DISCLOSURES TO GOVERNMENTAL AGENCIES FOR COUNTERTERRORISM PURPOSES.—Section 627(a) of the Fair Credit Reporting Act (15 U.S.C. 1681v(a)) is amended by inserting ''that includes a statement of facts showing that there are reasonable grounds to believe'' before ''that such information is necessary for''.

(d) FINANCIAL RECORDS.—Section 1114(a)(5)(A) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(A)) is amended—

(1) by striking ''certifies in writing'' and inserting ''provides a written certification by the Director (or a designee)''; and

(2) by striking ''that such records are sought for foreign counter intelligence purposes'' and inserting ''that includes a statement of facts showing that there are reasonable grounds to believe that such records are relevant to a foreign counterintelligence investigation''.

(e) REQUESTS BY AUTHORIZED INVESTIGATIVE AGENCIES.—Section 802(a)(3) of the National Security Act of 1947 (50 U.S.C. 436(a)(3)), is amended—

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

(2) by inserting after subparagraph (A) the following:

''(B) shall include a statement of facts showing that there are reasonable grounds to believe, based on credible information, that the person is, or may be, disclosing classified information in an unauthorized manner to a foreign power or agent of a foreign power;''.

SEC. 8. PUBLIC REPORTING ON NATIONAL SECURITY LETTERS.

Section 118(c) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (18 U.S.C. 3511 note) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''concerning different United States persons''; and

(B) in subparagraph (A), by striking '', excluding the number of requests for subscriber information'';

(2) by redesignating paragraph (2) as paragraph (3); and

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

''(2) CONTENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), each report required under this subsection shall include the total number of requests described in paragraph (1) requiring disclosure of information concerning—

''(i) United States persons;

''(ii) persons who are not United States persons;

''(iii) persons who are the subjects of authorized national security investigations; or

''(iv) persons who are not the subjects of authorized national security investigations.

''(B) EXCEPTION.—With respect to the number of requests for subscriber information under section 2709 of title 18, United States Code, a report required under this subsection need not provide information separated into each of the categories described in subparagraph (A).''.

SEC. 9. PUBLIC REPORTING ON THE FOREIGN INTELLIGENCE SURVEILLANCE ACT.

Section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

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

''(b) PUBLIC REPORT.—The Attorney General shall make publicly available the portion of each report under subsection (a) relating to paragraphs (1) and (2) of subsection (a).''; and

(3) in subsection (e), as so redesignated, by striking ''subsection (c)'' and inserting ''subsection (d)''.

SEC. 10. AUDITS.

(a) TANGIBLE THINGS.—Section 106A of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 200) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''2006'' and inserting ''2012''; and

(B) in paragraph (5)(C), by striking ''calendar year 2006'' and inserting ''each of calendar years 2006 through 2012'';

(2) in subsection (c), by adding at the end the following:

''(3) CALENDAR YEARS 2007 AND 2008.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007 and 2008.

''(4) CALENDAR YEARS 2009 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for the previous calendar year.'';

(3) in subsection (d)—

(A) in paragraph (1), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(B) in paragraph (2), by striking ''and (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(4) in subsection (e), by striking ''and (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''.

(b) NATIONAL SECURITY LETTERS.—Section 119 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109–177; 120 Stat. 219) is amended—

(1) in subsection (b)(1), by striking ''2006'' and inserting ''2012'';

(2) in subsection (c), by adding at the end the following:

''(3) CALENDAR YEARS 2007 AND 2008.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for calendar years 2007 and 2008.

''(4) CALENDAR YEARS 2009 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on the Judiciary and the Select Committee on Intelligence of the Senate a report containing the results of the audit conducted under this section for the previous calendar year.'';

(3) in subsection (d)—

(A) in paragraph (1), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(B) in paragraph (2), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''; and

(4) in subsection (e), by striking ''or (c)(2)'' and inserting ''(c)(2), (c)(3), or (c)(4)''.

(c) PEN REGISTERS AND TRAP AND TRACE DEVICES.—

(1) AUDITS.—The Inspector General of the Department of Justice shall perform comprehensive audits of the effectiveness and use, including any improper or illegal use, of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1841 et seq.) during the period beginning on January 1, 2007 and ending on December 31, 2012.

(2) REQUIREMENTS.—The audits required under paragraph (1) shall include—

(A) an examination of each instance in which the Attorney General or any other attorney for the Government submitted an application for an order or extension of an order under title IV of the Foreign Intelligence Surveillance Act of 1978, including whether the court granted, modified, or denied the application (including an examination of the basis for any modification or denial);

(B) an examination of each instance in which the Attorney General authorized the installation and use of a pen register or trap and trace device on an emergency basis under section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843);

(C) whether the Federal Bureau of Investigation requested that the Department of Justice submit an application for an order or extension of an order under title IV of the Foreign Intelligence Surveillance Act of 1978 and the request was not submitted to the court (including an examination of the basis for not submitting the application);

(D) whether bureaucratic or procedural impediments to the use of pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 prevent the Federal Bureau of Investigation from taking full advantage of the authorities provided under that title;

(E) any noteworthy facts or circumstances relating to the use of a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978, including any improper or illegal use of the authority provided under that title; and

(F) an examination of the effectiveness of the authority under title IV of the Foreign Intelligence Surveillance Act of 1978 as an investigative tool, including—

(i) the importance of the information acquired to the intelligence activities of the Federal Bureau of Investigation or any other department or agency of the Federal Government;

(ii) the manner in which the information is collected, retained, analyzed, and disseminated by the Federal Bureau of Investigation, including any direct access to the information provided to any other department, agency, or instrumentality of Federal, State, local, or tribal governments or any private sector entity;

(iii) with respect to calendar years 2010 through 2012, an examination of the minimization procedures used in relation to pen registers and trap and trace devices under title IV of the Foreign Intelligence Surveillance Act of 1978 and whether the minimization procedures protect the constitutional rights of United States persons;

(iv) whether, and how often, the Federal Bureau of Investigation used information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to produce an analytical intelligence product for distribution within the Federal Bureau of Investigation, to the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), or to other Federal, State, local, or tribal government departments, agencies, or instrumentalities; and

(v) whether, and how often, the Federal Bureau of Investigation provided information acquired under a pen register or trap and trace device under title IV of the Foreign Intelligence Surveillance Act of 1978 to law enforcement authorities for use in criminal proceedings.

(3) SUBMISSION DATES.—

(A) PRIOR YEARS.—Not later than December 31, 2010, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under this section for calendar years 2007 thorough 2009.

(B) CALENDAR YEARS 2010 THROUGH 2012.—Not later than December 31, 2011, and every year thereafter through 2013, the Inspector General of the Department of Justice shall submit to the Committee on the Judiciary and the Select Committee on Intelligence of the Senate and the Committee on the Judiciary and the Permanent Select Committee on Intelligence of the House of Representatives a report containing the results of the audit conducted under this section for the previous calendar year.

(4) PRIOR NOTICE TO ATTORNEY GENERAL AND DIRECTOR OF NATIONAL INTELLIGENCE; COMMENTS.—

(A) NOTICE.—Not less than 30 days before the submission of a report under subparagraph (A) or (B) of paragraph (3), the Inspector General of the Department of Justice shall provide the report to the Attorney General and the Director of National Intelligence.

(B) COMMENTS.—The Attorney General or the Director of National Intelligence may provide such comments to be included in a report submitted under subparagraph (A) or (B) of paragraph (3) as the Attorney General or the Director of National Intelligence may consider necessary.

(5) UNCLASSIFIED FORM.—A report submitted under subparagraph (A) or (B) of paragraph (3) and any comments included under paragraph (4)(B) shall be in unclassified form, but may include a classified annex.

By Mr. ROCKEFELLER (for himself and Mrs. HUTCHISON):

S. 1694. A bill to allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce legislation that will help improve public safety communications.

September is a month when we remember. We remember that 8 years ago we witnessed the impossible horror of September 11th. We remember that 4 years ago we watched the watery devastation of Hurricane Katrina. We remember because even with the passage of time, these are wounds that do not heal and losses we will never forget.

These events also demonstrated the tremendous bravery of our public safety officials. Their courage awes and inspires. So when tragedy strikes, we want to make sure that those who wear the shield have the communications systems they need to do the job. We know now that public safety communications can mean the difference between security and harm.

Yet when it comes to public safety communications, we still have a lot of work to do. Four years ago, Congress took an important first step. In the Digital Television and Public Safety Act of 2005, Congress authorized the National Telecommunications and Information Administration, in consultation with the Department of Homeland Security, to implement the Public Safety Interoperable Communications Grant Program. This program provided a one-time, formula-based, matching grant opportunity for public safety agencies to improve interoperable communications systems.

Governors across the country lined up to designate State agencies to apply for and administer these funds. Under the program, funds were originally available for the purchase and deployment of communications equipment and training for system users. Later, in the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress expanded the program to include planning and coordination activities.

But now millions of these dollars are at risk. The September 30, 2010, deadline for expending funds that is a holdover from the original legislation could inadvertently jeopardize the effectiveness of public safety communications projects in States across the country. Many grantees spent the first year of the grant period developing required plans and justifications and then awaiting approvals from the Department of Homeland Security and the National Telecommunications and Information Administration. As a result, many grantees did not have the full 3-year award period to acquire and deploy interoperable communications equipment. They face the real possibility of reaching the September 30, 2010, deadline with communications projects incomplete. In short, it is no longer sensible to bind the States to this original deadline in 2010.

There is no need to take my word for it. The Inspector General at the Department of Commerce reached exactly the same conclusion. In a report published in March 2009, the Inspector General found that grantees were unlikely to finish their communications projects within the statutory time frames. The Inspector General even recommended that the National Telecommunications and Information Administration work with Congress to extend the deadline for grantees to expend their communications funds from this program. Now the National Governors Association and the Association of Public Safety Communications Officials also have chimed in to support an extension.

I rise today so we can do something about it. By extending the September 30, 2010, deadline by one year and on a case-by-case basis two years, we can make sure that the funds are used exactly as Congress intended. We can make sure that public safety projects are not stranded due to arbitrary deadlines. We can make sure that our first responders have the first class communications systems they desperately need and deserve. For this reason, I urge my colleagues to join me and Senator HUTCHISON and support this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed into the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1694

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANTS.

(a) Notwithstanding section 3006(a)(2) of the Digital Television Transition and Public Safety Act of 2005 (47U.S.C. 309 note), sums made available to administer the Public Safety Interoperable Communications Grant Program under section 309(j)(8)(E) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(E)) shall remain available until expended, but not beyond September 30, 2012.

(b) The period for performance of any investment approved under the Program as of the date of enactment of this Act shall be extended by one year, but not later than September 30, 2011, except that the Assistant

Secretary of Commerce for Communications and Information may extend, on a case-by-case basis, the period of performance for any investment approved under the Program as of that date for a period of not more than 2 years, but not later than September 30, 2012. In making a determination as to whether an extension beyond September 30, 2011, is warranted, the Assistant Secretary should consider the circumstances that gave rise to the need for the extension, the likelihood of completion of performance within the deadline for completion, and such other factors as the Assistant Secretary deems necessary to make the determination.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 279—MAKING MINORITY PARTY APPOINTMENTS FOR CERTAIN COMMITTEES FOR THE 111TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 279

Resolved, That the following be the minority membership on the following committees for the remainder of the 111th Congress, or until their successors are appointed:

COMMITTEE ON ARMED SERVICES: Mr. McCain, Mr. Inhofe, Mr. Sessions, Mr. Chambliss, Mr. Graham, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Burr, Mr. Vitter, and Ms. Collins.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS: Mr. Shelby, Mr. Bennett, Mr. Bunning, Mr. Crapo, Mr. Corker, Mr. DeMint, Mr. Vitter, Mr. Johanns, Mrs. Hutchison, and Mr. Gregg.

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION: Mrs. Hutchison, Ms. Snowe, Mr. Ensign, Mr. DeMint, Mr. Thune, Mr. Wicker, Mr. LeMieux, Mr. Isakson, Mr. Vitter, Mr. Brownback, and Mr. Johanns.

SPECIAL COMMITTEE ON AGING: Mr. Corker, Mr. Shelby, Ms. Collins, Mr. Hatch, Mr. LeMieux, Mr. Brownback, Mr. Graham, and Mr. Chambliss.

SENATE RESOLUTION 280—CELEBRATING THE 10TH ANNIVERSARY OF THE RULE OF LAW PROGRAM OF TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 280

Whereas in 1997, President William J. Clinton and President Jiang Zemin agreed at the Sino-American Summit to collaborative efforts to enhance legal exchanges between the United States and China;

Whereas in 1999, Temple University established a Master of Laws degree program in Beijing, the first foreign law degree granting program approved by the Chinese Ministry of Education, as a collaborative effort, first with China University of Political Science and Law, and subsequently with Tsinghua University School of Law;

Whereas in 1999, Temple University signed a cooperative agreement with the State Administration of Foreign Expert Affairs of China to deliver rule of law educational programs to Chinese government officials;

Whereas in 2000, Temple University signed a cooperative agreement with the Supreme People's Court of China to conduct judicial training;

Whereas in 2001, Temple University signed a cooperative agreement with the Supreme People's Procuratorate of China to conduct prosecutor training;

Where in 2002, Temple University began a series of scholarly roundtables directed at Chinese law and legal education, with topics including World Trade Organization, Internet, environmental, health, and private international law as well as nongovernmental organization advocacy and experiential legal education;

Whereas Justice Antonin G. Scalia visited Beijing and the Temple University rule of law program as part of a broad legal exchange between the United States and China;

Whereas in 2003, former Temple University School of Law dean Robert Reinstein received the National Friendship Award from Zhu Rongji, former Prime Minister of China in the Great Hall of the People;

Whereas in 2009, Temple University, Tsinghua University, and the State Administration of Foreign Expert Affairs of China will host events in Beijing to commemorate the 10-year anniversary of the rule of law program;

Whereas as of 2009, Temple has educated a total of 903 legal professionals in the rule of law program in China, 78 percent of whom work in the public sector; and

Whereas 391 Chinese legal professionals, including judges, National People's Congress and State Council legislative officers, prosecutors, government officials, law professors, and commercial lawyers have graduated from, or are currently enrolled in, Temple's Beijing Master of Laws program: Now, therefore, be it

Resolved, That the Senate—

(1) commends and congratulates Temple University Beasley School of Law, its faculty, its alumni, its 10th graduating class, and all involved in the 10th anniversary of the China rule of law program; and

(2) recognizes that—

(A) the Temple University Beasley School of Law rule of law program has succeeded in furthering the goal of promoting collaborative legal exchanges between the United States and China; and

(B) Temple University and its partners in China represent the spirit of cooperation and friendship between these 2 great nations, and will surely continue to strengthen those bonds into the future.

Mr. SPECTER. Mr. President, I seek recognition to note the 10th anniversary of Temple University's China Rule of Law Program. The Beasley School of Law housed at Temple University stands as an outstanding leader in promoting cross-cultural partnership between legal professionals in the United States and China. This year, the Beasley School celebrates ten years of cooperation with Tsinghua University in Beijing. Temple University's China Rule-of-Law Program has awarded nearly 400 Master of Laws degrees to Chinese legal professionals to date. The first foreign law degree program to be approved by the Chinese Ministry of Education as well as the American Bar Association, Temple's Rule of Law Program represents a landmark program and step toward increased global understanding of legal procedure by educating Chinese legal professionals in the same manners and by the same standards as those practiced at American law schools. I respectfully submit this resolution to recognize Temple University's outstanding leadership in promoting cross-cultural exchange in the field of international law.

The partnership between Temple University and China's Tsinghua University predates the establishment in 1999 of the Master of Laws Degree program. Shortly after the official reestablishment of diplomatic relations between the United States and China in January of 1979, Temple University awarded Vice Premier Deng Xiaoping with an honorary law degree. Educational and cultural exchange became the centerpieces of renewed cooperation between the two powers over the course of the last three decades. Shortly after President Clinton and President Zemin's mutual call for collaboration in legal exchange in 1997, Temple formally created the China Rule-of-Law Program that merits commendation today.

Cooperating to meet the demands of a global environment in which legal professionals are increasingly required to be trained in international legal standards, American faculty from Temple, Chinese faculty at Tsinghua University, and highly accomplished international practitioners teach courses entirely in English at Tsinghua's facilities in Beijing. The 30 credit curriculum concentrates on American and international law and in particular focuses on the subfields of criminal and business law. The program requires the same standards of scholarship of its Chinese students that ABA accredited American law institutions require at home and requires a full-time student to devote 15 months to complete the program. Students earning their degrees through Temple's Beasley-Tsinghua program participate in the same dialogue-based methods as students in American classrooms; they are also given access to the Lexis and Westlaw legal research tools during their studies. This means that Chinese students receiving the Master of Laws degree from Temple's Beasley Law School at Tsinguah become familiar with the same processes for solving legal puzzles and conducting legal research as those that mark the standard within international circles. Therefore, as a capacity building tool for Chinese professionals within the international legal environment, Temple's China Rule-of-Law program is indispensible.

As a means of promoting bilateral understanding over legal norms and standards, this type of program is even more vital. Legal norms and standards, we must remember, are formed and interpreted within social, cultural, and historical contexts. The continued growth of a strong partnership between our two nations is contingent upon a full understanding of this contextual environment because it serves as the setting in which legal standards are shaped and in which they are applied. In today's international climate, this cooperation is more important than ever before, and Temple should be regarded as an exemplar for its leadership in cultivating such cooperation.

The study abroad component of this program, which brings these Chinese