

AMENDMENT TO _____

OFFERED BY _____

Page 24, strike line 14 and all that follows through page 25, line 20 and insert the following:

1 “(1) IN GENERAL.—

2 “(A) PRESUMPTION OF CLEARING.—A
3 swap shall be submitted for clearing if a deriva-
4 tives clearing organization that is registered
5 under this Act will accept the swap for clearing.

6 “(B) OPEN ACCESS.—The rules of a de-
7 rivatives clearing organization described in sub-
8 paragraph (A) shall—

9 “(i) prescribe that all swaps submitted
10 to the derivatives clearing organization
11 with the same terms and conditions are
12 fungible and may be offset with each other;
13 and

14 “(ii) provide for non-discriminatory
15 clearing of a swap executed on or through
16 the rules of an unaffiliated designated con-
17 tract market or swap execution facility.

18 “(2) COMMISSION APPROVAL.—

1 “(A) IN GENERAL.—A derivatives clearing
2 organization shall submit to the Commission for
3 prior approval each swap, or any group, cat-
4 egory, type, or class of swaps, that it seeks to
5 accept for clearing, which submission the Com-
6 mission shall make available to the public.

7 “(B) DEADLINE.—The Commission shall
8 take final action on a request submitted pursu-
9 ant to subparagraph (A) not later than 90 days
10 after submission of the request, unless the de-
11 rivatives clearing organization submitting the
12 request agrees to an extension of the time limi-
13 tation established under this subparagraph. A
14 request on which the Commission fails to take
15 final action within the time limitation estab-
16 lished under this subparagraph is deemed ap-
17 proved.

18 “(C) APPROVAL.—The Commission shall
19 approve, unconditionally or subject to such
20 terms and conditions as the Commission deter-
21 mines to be appropriate, any request submitted
22 pursuant to subparagraph (A) if the Commis-
23 sion finds that the request is consistent with
24 section 5b(c)(2).

1 “(D) RULES.—Not later than 180 days
2 after the date of the enactment of the Over-the-
3 Counter Derivatives Markets Act of 2009, the
4 Commission shall adopt rules for a derivatives
5 clearing organization’s submission for approval,
6 pursuant to this paragraph, of a swap, or a
7 group, category, type or class of swaps, that it
8 seeks to accept for clearing.

9 “(3) STAY OF CLEARING REQUIREMENT.—At
10 any time after issuance of an approval pursuant to
11 paragraph (2):

12 “(A) REVIEW PROCESS.—The Commission,
13 on application of a counterparty to a swap or
14 on its own initiative, may stay the clearing re-
15 quirement of paragraph (1) until the Commis-
16 sion completes a review of the terms of the
17 swap (or the group, category, type, or class of
18 swaps) and the clearing arrangement.

19 “(B) DEADLINE.—The Commission shall
20 complete a review undertaken pursuant to sub-
21 paragraph (A) not later than 90 days after
22 issuance of the stay, unless the derivatives
23 clearing organization that clears the swap, or
24 group, category, type or class of swaps, agrees

1 to an extension of the time limitation estab-
2 lished under this subparagraph.

3 “(C) DETERMINATION.—Upon completion
4 of the review undertaken pursuant to subpara-
5 graph (A), the Commission may—

6 “(i) determine, unconditionally or sub-
7 ject to such terms and conditions as the
8 Commission determines to be appropriate,
9 that the swap, or group, category, type, or
10 class of swaps, must be cleared pursuant
11 to this subsection if it finds that such
12 clearing is consistent with section 5b(c)(2);
13 or

14 “(ii) determine that the clearing re-
15 quirement of paragraph (1) shall not apply
16 to the swap, or group, category, type, or
17 class of swaps.

18 “(D) RULES.—Not later than 180 days
19 after the date of the enactment of the Over-the-
20 Counter Derivatives Markets Act of 2009, the
21 Commission shall adopt rules for reviewing,
22 pursuant to this paragraph, a derivatives clear-
23 ing organization’s clearing of a swap, or a
24 group, category, type, or class of swaps, that it
25 has accepted for clearing.”.

Page 26, strike lines 12 through 17 and insert the following:

1 “(B) REPORTING BY SWAP DEALERS AND
2 MAJOR SWAP PARTICIPANTS.—In transactions
3 where both counterparties are swap dealers or
4 major swap participants, both counterparties
5 shall report the transaction. In transactions
6 where only 1 counterparty is a swap dealer or
7 major swap participant, the swap dealer or
8 major swap participant shall report the trans-
9 action. In transactions where neither
10 counterparty is a swap dealer or major swap
11 participant, only 1 counterparty shall be re-
12 quired to report the transaction and the
13 counterparties shall determine the reporting
14 party by contract or otherwise.”.

Page 25, line 21, strike “(3)” and insert “(4)”.

Page 26, line 3, strike “(4)” and insert “(5)”.

Page 26, line 18, strike “(5)” and insert “(6)”.

Page 27, line 14, strike “(6)” and insert “(7)”.

Page 29, line 3, strike “(7)” and insert “(8)”.

Page 29, line 11, strike “(8)” and insert “(9)”.

Page 45, line 23, insert “and public interest representatives” before the period.

Page 46, beginning on line 10, strike “Commission” and insert “Commission and any designated swap repository”.

Page 46, line 17, after the period insert “A derivatives clearing organization that clears security-based swap agreements (as defined in section 3(a)(76) of the Securities Exchange Act of 1934) shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to such security-based swap agreements.”.

Page 46, line 20, insert “(with respect to swaps other than security-based swap agreements)” after “Commission”.

Page 47, line 25, insert “or (c)” after “(b)”.

Page 48, line 7, insert “or a bank under its regulatory jurisdiction” after “product”.

Page 48, line 23, strike the close quotation marks and the period that follows.

Page 48, after line 23, insert the following:

1 “(c) EXCEPTION.—The exclusion in subsection (a)
2 shall not apply to an identified banking product that—

3 “(1) is a product of a bank that is not under
4 the regulatory jurisdiction of an appropriate Federal
5 banking agency;

6 “(2) meets the definition of swap in section
7 1a(35) of the Commodity Exchange Act or security-
8 based swap in section 3(a)(68) of the Securities and
9 Exchange Act of 1934; and

10 “(3) has become known to the trade as a swap
11 or security-based swap, or has been structured as an
12 identified banking product for the purpose of evad-
13 ing the provisions of the Commodity Exchange Act
14 (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15
15 U.S.C. 77a et seq.), or the Securities Exchange Act
16 of 1934 (15 U.S.C. 78a et seq.).”.

Page 58, line 10, strike “initial and variation”.

Page 58, line 20, strike “initial and variation”.

Page 61, line 11, strike “both initial and variation”.

Page 66, strike lines 5 through 9 and insert the fol-
lowing:

17 “(ii) for cleared swaps, upon the re-
18 quest of the counterparty, the daily mark
19 from the appropriate clearinghouse and for

1 non-cleared swaps, upon the request of the
2 counterparty, the daily mark of the swap
3 dealer or major swap participant; and”.

Page 61, beginning on line 22, strike “Margin requirements” and all that follows through line 25 and insert “Any such margin requirements for swaps shall provide for the use of non-cash collateral.”.

Page 70, strike lines 6 through 14 and insert the following:

4 “(1) EXEMPTIONS.—The Commission may exempt,
5 conditionally or unconditionally, a swap dealer or major
6 swap participant from the prudential requirements of the
7 Over-the-Counter Derivatives Markets Act of 2009 if the
8 Commission finds that such swap dealer or major swap
9 participant is subject to comparable, comprehensive super-
10 vision and regulation on a consolidated basis by the Secu-
11 rities and Exchange Commission, a Prudential Regulator
12 or the appropriate governmental authorities in the organi-
13 zation’s home country.”.

Page 71, line 7, after the period insert “This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.”.

Page 71, line 10, insert “variation or initial” after “as”.

Page 71, line 14, strike “funds or other property” and insert “variation or initial margin or collateral”.

Page 71, beginning on line 15, strike “funds or other property” and insert “variation or initial margin or collateral”.

Page 73, strike lines 1 through 4 and insert the following:

- 1 “(1) IN GENERAL.—
- 2 “(A) No person may operate a swap execu-
- 3 tion facility unless the facility is registered
- 4 under this section.
- 5 “(B) The term ‘swap execution facility’
- 6 means an entity that facilitates the execution of
- 7 swaps between two persons through any means
- 8 of interstate commerce but which is not a des-
- 9 ignated contract market.”.

Page 77, line 17, after the period insert “The swap execution facility shall, upon request, make available to the Securities and Exchange Commission all information (including information on a real-time basis) relating to transactions in security-based swap agreements (as de-

fined in section 3(a)(76) of the Securities Exchange Act of 1934).”.

Page 105, after line 3, insert the following:

1 “(d) Any such books and records relating to trans-
2 actions in security-based swap agreements (as defined in
3 section 3(a)(76) of the Securities Exchange Act of 1934)
4 shall be open at all times to inspection and examination
5 by the Securities and Exchange Commission.

Page 105, line 4, strike “(d)” and insert “(e)”.

Page 105, line 8, strike “(e)” and insert “(f)”.

Page 105, strike lines 12 through 21 and insert the following:

6 SEC. 133. AUTHORITY TO BAN ABUSIVE SWAPS.

7 The Commodity Futures Trading Commission and
8 the Securities and Exchange Commission may, by rule or
9 order, jointly collect information as may be necessary con-
10 cerning the markets for any types of swap (as defined in
11 section 1a(35) of the Commodity Exchange Act) or secu-
12 rity-based swap (as defined in section 1a(38) of the such
13 Act) and jointly issue a report with respect to any types
14 of swaps or security-based swaps which the Commodity
15 Futures Trading Commission and the Securities and Ex-
16 change Commission find are detrimental to the stability

1 of a financial market or of participants in a financial mar-
2 ket.

Page 106, line 3, strike “, and the Office of Deriva-
tives Supervision”.

Page 106, strike lines 11 through 20 and insert the
following:

3 **SEC. 135. AUTHORITY TO BAN ACCESS TO THE UNITED**
4 **STATES FINANCIAL SYSTEM.**

5 If the Commodity Futures Trading Commission or
6 the Securities and Exchange Commission determines that
7 the regulation of swaps or security-based swaps markets
8 in a foreign country undermines the stability of the U.S.
9 financial system, either Commission, in consultation with
10 the Secretary of the Treasury, may prohibit an entity
11 domiciled in that country from participating in the United
12 States in any swap or security-based swap activities.

Page 107, after line 25, insert the following (and re-
designate succeeding paragraphs accordingly):

13 (2) in paragraph (10) by inserting “security-
14 based swaps” after “security future,”

Page 113, line 7, after “swap” insert “or security-
based swap agreement”.

Page 113, line 15, after “security” insert “or a security-based swap or security-based swap agreement with respect to such security”.

Page 113, line 18, after “swap” insert “or security-based swap agreement”.

Page 114, line 4, after “security” insert “or a security-based swap or security-based swap agreement with respect to such security”.

Page 114, line 6, after “swap” insert “or security-based swap agreement”.

Page 114, line 9, after “swap” insert “security-based swap agreement”.

Page 114, line 18, after “security” insert “or a security-based swap or a security-based swap agreement with respect to such security”.

Page 114, line 21, after “swap” insert “or security-based swap agreement”.

Page 115, after line 2, insert the following (and redesignate the subsequent paragraphs accordingly):

- 1 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended
- 2 by striking “(as defined in section 206B of the
- 3 Gramm-Leach-Bliley Act)”;

Page 117, strike line 9 and all that follows through page 118, line 20 and insert the following:

1 “(1) IN GENERAL.—

2 “(A) PRESUMPTION OF CLEARING.—A se-
3 curity-based swap shall be submitted for clear-
4 ing if a clearing agency that is registered under
5 this Act will accept the security-based swap for
6 clearing;

7 “(B) OPEN ACCESS.—The rules of a clear-
8 ing agency described in subparagraph (A)
9 shall—

10 “(i) prescribe that all security-based
11 swaps submitted to the clearing agency
12 with the same terms and conditions are
13 fungible and may be offset with each other;
14 and

15 “(ii) provide for non-discriminatory
16 clearing of a security-based swap executed
17 on or through the rules of an unaffiliated
18 exchange or alternative swap execution fa-
19 cility.

20 “(2) COMMISSION APPROVAL.—

21 “(A) IN GENERAL.—A clearing agency
22 shall submit to the Commission for prior ap-
23 proval each security-based swap, or any group,

1 category, type or class of security-based swaps,
2 that it seeks to accept for clearing, which sub-
3 mission the Commission shall make available to
4 the public.

5 “(B) DEADLINE.—The Commission shall
6 take final action on a request submitted pursu-
7 ant to subparagraph (A) not later than 90 days
8 after submission of the request, unless the
9 clearing agency submitting the request agrees
10 to an extension of the time limitation estab-
11 lished under this subparagraph. A request on
12 which the Commission fails to take final action
13 within the time limitation established under this
14 subparagraph shall be deemed approved.

15 “(C) APPROVAL.—The Commission shall
16 approve, unconditionally or subject to such
17 terms and conditions as the Commission deter-
18 mines to be appropriate, any request submitted
19 pursuant to subparagraph (A) if it finds that
20 the request is consistent with the core principles
21 specified under subsection (l).

22 “(D) RULES.—Not later than 180 days
23 after the date of enactment of the Over-the-
24 Counter Derivatives Markets Act of 2009, the
25 Commission shall adopt rules for a clearing

1 agency's submission for approval, pursuant to
2 this paragraph, of a security-based swap, or a
3 group, category, type or class of security-based
4 swaps, that it seeks to accept for clearing.

5 “(3) STAY OF CLEARING REQUIREMENT.—At
6 any time after issuance of an approval pursuant to
7 paragraph (2)—

8 “(A) REVIEW PROCESS.—The Commission,
9 on application of a counterparty to a security-
10 based swap or on its own initiative, may stay
11 the clearing requirement of paragraph (1) until
12 the Commission completes a review of the terms
13 of the security-based swap (or the group, cat-
14 egory, type or class of security-based swaps)
15 and the clearing arrangement.

16 “(B) DEADLINE.—The Commission shall
17 complete a review undertaken pursuant to sub-
18 paragraph (A) not later than 90 days after
19 issuance of the stay, unless the clearing agency
20 that clears the security-based swap, or group,
21 category, type or class of security-based swaps,
22 agrees to an extension of the time limitation es-
23 tablished under this subparagraph.

1 “(C) DETERMINATION.—Upon completion
2 of the review undertaken pursuant to subpara-
3 graph (A), the Commission may—

4 “(i) determine, unconditionally or sub-
5 ject to such terms and conditions as the
6 Commission determines to be appropriate,
7 that the security-based swap, or group,
8 category, type or class of security-based
9 swaps, must be cleared pursuant to this
10 subsection if it finds that such clearing is
11 consistent with the securities laws; or

12 “(ii) determine that the clearing re-
13 quirement of paragraph (1) shall not apply
14 to the security-based swap, or group, cat-
15 egory, type or class of security-based
16 swaps.

17 “(D) RULES.—Not later than 180 days
18 after the date of enactment of the Over-the-
19 Counter Derivatives Markets Act of 2009, the
20 Commission shall adopt rules for reviewing,
21 pursuant to this paragraph, a clearing agency’s
22 clearing of a security-based swap, or a group,
23 category, type or class of security-based swaps,
24 that it has accepted for clearing.”.

Page 118, line 21, strike “(2)” and insert “(4)”.

Page 119, line 3, strike “(3)” and insert “(5)”.

Page 119, strike lines 13 through 19 and insert the following:

1 “(B) REPORTING BY SECURITY-BASED
2 SWAP DEALERS AND MAJOR SECURITY-BASED
3 SWAP PARTICIPANTS.—In transactions where
4 only 1 counterparty is a security-based swap
5 dealer or major security-based swap participant,
6 the security-based swap dealer or major secu-
7 rity-based swap participant shall report the
8 transaction. In transactions where neither
9 counterparty is a security-based swap dealer or
10 major security-based swap participant, only 1
11 counterparty shall be required to report the
12 transaction and the counterparties shall deter-
13 mine the reporting party by contract or other-
14 wise.”

Page 119, line 20, strike “(4)” and insert “(6)”.

Page 120, after line 15, insert the following:

15 “(5) EXCEPTION.—The requirements of para-
16 graph (1) shall not apply to a security-based swap
17 if—

1 “(A) no clearing agency registered under
2 this Act will accept the security-based swap for
3 clearing; or

4 “(B) one of the counterparties to the secu-
5 rity-based swap is not a security-based swap
6 dealer or major security-based swap partici-
7 pant.”.

Page 122, line 1, insert “and any designated swap repository” after “Commission”.

Page 122, line 9, strike “alternative”.

Page 134, line 9, insert “and public interest representatives” before the period.

Page 137, line 3, strike “ALTERNATIVE”.

Page 137, line 6, strike “**ALTERNATIVE**”.

Page 137, strike lines 8 through 11 and insert the following:

8 “(1) IN GENERAL.—

9 “(A) No person may operate a swap execu-
10 tion facility unless such facility is registered
11 under this section.

12 “(B) For purposes of this section, the term
13 ‘swap execution facility’ means an entity that
14 facilitates the execution of swaps between 2

1 persons through any means of interstate com-
2 merce but which is not a designated contract
3 market.”.

Page 137, beginning on line 12 through page 144,
line 18, strike “alternative” each place it appears.

Page 146, line 2, insert after the period the fol-
lowing: “This subsection shall not be interpreted to pre-
clude commercial arrangement regarding the investment
of the segregated funds or other property and the related
allocation of gains and losses resulting from any such in-
vestment.”.

Page 146, line 5, insert “variation or initial” after
“dealer as”.

Page 146, line 10, strike “funds or other property”
and insert “variation or initial margin or collateral”.

Page 146, line 11, strike “funds or other property”
and insert “variation or initial margin or collateral”.

Page 148, line 9, after “SWAPS” insert “AND SECUR-
ITY-BASED SWAP AGREEMENTS”.

Page 148, line 12, strike “(i)” and insert “(j)”.

Page 148, line 17, after “swaps” insert “or any se-
curity-based swap agreement”.

Page 161, line 14, strike “initial and variation”.

Page 162, line 1, strike “initial and variation”.

Page 164, line 19, strike “both initial and variation”.

Page 169, strike line 24 and all that follows through page 170, line 4 and insert the following:

1 “(ii) for cleared swaps, upon the re-
2 quest of the counterparty, the daily mark
3 from the appropriate clearinghouse and for
4 non-cleared swaps, upon the request of the
5 counterparty, the daily mark of the secu-
6 rity-based swap dealer or major security-
7 based swap participant; and”.

Page 180, strike lines 6 through 15 and insert the following:

8 “(5) EXEMPTIONS.—The Commission may ex-
9 empt, conditionally or unconditionally, a security-
10 based swap dealer or major security-based swap par-
11 ticipant from the prudential requirements of the
12 Over-the-Counter Derivatives Markets Act of 2009 if
13 the Commission finds that such security-based swap
14 dealer or major security-based swap participant is
15 subject to comparable, comprehensive supervision

1 and regulation on a consolidated basis by the Com-
2 modity Futures Trading Commission, a Prudential
3 Regulator or the appropriate governmental authori-
4 ties in the organization’s home country.””.

Page 185, after line 25, insert the following:

5 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
6 of the Securities Act of 1933 is amended by adding at
7 the end the following:

8 “(15) Any security-based swap, as defined in
9 section 2(a)(17) that is not otherwise a security as
10 defined in section 2(a)(1) and that satisfies such
11 conditions as established by rule or regulation by the
12 Commission consistent with the provisions of the
13 Over-the-Counter Derivatives Markets Act of 2009.
14 The Commission shall promulgate rules imple-
15 menting this exemption.”.

Page 186, line 1, strike “(b)” and insert “(c)”.

Page 186, beginning on line 23, strike “amended by
adding at the end the following new subsection” and in-
sert “amended—

16 (1) in subsection (a)(1) by inserting “and (c)
17 and subject to subsection (d)” after “provided in
18 subsection (b)””; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(d) EXEMPTIVE AUTHORITY.—The Commission
4 may use its authority under subsection (a) to exempt any
5 person, security, or transaction, or any class of persons,
6 securities, or transactions from any provision or provisions
7 of this title or of any rule or regulation thereunder that
8 applies to such person, security, or transaction solely be-
9 cause a security-based swap is a security, as such term
10 is defined in section 3(a) of this title.”.

