

110TH CONGRESS
2^D SESSION

H. R. 7266

To amend the Federal securities laws to enhance oversight over certain derivatives dealers and hedge funds, reduce the potential for such entities to increase systemic risk in the financial markets, enhance investor protections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2008

Mr. MARKEY introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Federal securities laws to enhance oversight over certain derivatives dealers and hedge funds, reduce the potential for such entities to increase systemic risk in the financial markets, enhance investor protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Derivatives Market Re-
5 form Act of 1999”.

1 **SEC. 2. DEFINITIONS.**

2 Section 3(a) of the Securities Exchange Act of 1934
3 (15 U.S.C. 78c(a)) is amended by adding at the end the
4 following new paragraphs:

5 “(65) The term ‘derivative’ means any financial
6 contract or other instrument that derives its value
7 from the value or performance of any security or
8 other financial instrument, or of any excluded com-
9 modity (as defined in section 1a(13) of the Com-
10 modity Exchange Act), but does not include—

11 “(A) any security that is traded on a na-
12 tional securities exchange or on an automated
13 interdealer quotation system sponsored by a se-
14 curities association registered under section
15 15A of this title;

16 “(B) any forward contract which has a
17 maturity at the time of issuance not exceeding
18 270 days; or

19 “(C) any deposit held by a financial insti-
20 tution.

21 “(66) The term ‘derivatives dealer’ means any
22 person engaged in the business of buying, selling, or
23 entering into derivatives for his own account, but
24 does not include—

25 “(A) any person insofar as such person
26 buys, sells, or enters into derivatives for his own

1 account, either individually or in a fiduciary ca-
2 pacity, but not as part of a regular business; or

3 “(B) any financial institution.

4 “(67) The term ‘material associated person’
5 means any associated person of a broker, dealer,
6 government securities broker, government securities
7 dealer, municipal securities dealer, or derivatives
8 dealer (other than a natural person) whose business
9 activities are reasonably likely to have a material im-
10 pact on the financial or operational condition of any
11 such broker, dealer, government securities broker,
12 government securities dealer, municipal securities
13 dealer, or derivatives dealer, including on its net
14 capital, its liquidity, or its ability to conduct or fi-
15 nance its operations.

16 “(68) The term ‘person associated with a de-
17 rivatives dealer’ or ‘associated person of a deriva-
18 tives dealer’ means any partner, officer, director, or
19 branch manager of such derivatives dealer (or any
20 person occupying a similar status or performing
21 similar functions), and any other employee of such
22 derivatives dealer who is engaged in the manage-
23 ment, direction, supervision, or performance of any
24 activities relating to derivatives, and any person di-

1 rectly or indirectly controlling, controlled by, or
2 under common control with such derivatives dealer.

3 “(69) The term ‘designated examining author-
4 ity’ means the national securities exchange or reg-
5 istered securities association of which a registered
6 broker or dealer is a member, and if such broker or
7 dealer is a member of more than 1 such self-regu-
8 latory organization, the organization designated by
9 the Commission as the principal examining authority
10 for such broker or dealer.”.

11 **TITLE I—DERIVATIVES DEALERS**

12 **SEC. 101. DERIVATIVES DEALER REGISTRATION.**

13 The Securities Exchange Act of 1934 is amended by
14 inserting after section 15E (15 U.S.C. 78o–7) the fol-
15 lowing new section:

16 **“SEC. 15F. DERIVATIVES DEALERS.**

17 “(a) REGISTRATION REQUIRED.—

18 “(1) REGISTRATION OF DERIVATIVES DEAL-
19 ERS.—

20 “(A) REGISTRATION REQUIREMENT.—It
21 shall be unlawful for any derivatives dealer
22 (other than a registered broker or dealer, or a
23 material associated person of a registered
24 broker or dealer that has filed notice in accord-
25 ance with subparagraph (B) of this paragraph)

1 to make use of the mails or any means or in-
2 strumentality of interstate commerce to effect
3 any transaction in, or to induce or attempt to
4 induce the purchase or sale of, any derivative
5 unless such derivatives dealer is registered in
6 accordance with paragraph (2) of this sub-
7 section.

8 “(B) MATERIAL ASSOCIATED PERSONS OF
9 BROKERS AND DEALERS.—

10 “(i) NOTICE REQUIREMENT.—It shall
11 be unlawful for any derivatives dealer that
12 is a material associated person of a reg-
13 istered broker or dealer (other than a ma-
14 terial associated person of a registered
15 broker or dealer that is itself a registered
16 broker or dealer, or a derivatives dealer
17 that is registered in accordance with para-
18 graph (2) of this subsection) to make use
19 of the mails or any means or instrumen-
20 tality of interstate commerce to effect any
21 transaction in, or to induce or attempt to
22 induce the purchase or sale of, any deriva-
23 tive unless such derivatives dealer has filed
24 with the Commission written notice that it
25 is a derivatives dealer. When such a de-

1 derivatives dealer ceases to act as such it
2 shall file with the Commission a written
3 notice that it is no longer acting as a de-
4 rivatives dealer.

5 “(ii) FORM OF NOTICE.—Such notices
6 shall be in such form and contain such in-
7 formation concerning a derivatives dealer
8 and any persons associated with such de-
9 rivatives dealer as the Commission shall,
10 by rule, prescribe as necessary or appro-
11 priate in the public interest or for the pro-
12 tection of investors.

13 “(2) REGISTRATION PROCEDURE.—

14 “(A) APPLICATION FOR REGISTRATION.—
15 A derivatives dealer subject to the registration
16 requirement of paragraph (1)(A) of this sub-
17 section may be registered by filing with the
18 Commission an application for registration in
19 such form and containing such information and
20 documents concerning such derivatives dealer
21 and any of its associated persons as the Com-
22 mission, by rule, may prescribe as necessary or
23 appropriate in the public interest or for the pro-
24 tection of investors.

1 “(B) INITIAL ACTION.—Within 45 days of
2 the date of filing of such application (or within
3 such longer period as to which the applicant
4 consents), the Commission shall—

5 “(i) by order grant registration, or

6 “(ii) institute proceedings to deter-
7 mine whether registration should be de-
8 nied.

9 “(C) PROCEEDINGS ON APPLICATION.—

10 Such proceedings shall include notice of the
11 grounds for denial under consideration and op-
12 portunity for hearing and shall be concluded
13 within 120 days of the date of the filing of the
14 application for registration. At the conclusion of
15 such proceedings, the Commission, by order,
16 shall grant or deny such registration. The Com-
17 mission may extend the time for the conclusion
18 of such proceedings for up to 90 days if it finds
19 good cause for such extension and publishes its
20 reasons for so finding or for such longer period
21 as to which the applicant consents.

22 “(D) EFFECTIVE DATE OF REGISTRA-
23 TION.—The order granting registration shall
24 not be effective until such derivatives dealer has
25 become a member of a securities association

1 registered under section 15A of this title, unless
2 the Commission has exempted such derivatives
3 dealer, by rule or order, from such membership.

4 “(E) GROUNDS FOR DECISION.—The Com-
5 mission shall grant the registration of a deriva-
6 tives dealer if the Commission finds that the re-
7 quirements of this section are satisfied. The
8 Commission shall deny such registration if it
9 does not make such a finding or if it finds that
10 if the applicant were so registered, its registra-
11 tion would be subject to suspension or revoca-
12 tion under subsection (c) of this section.

13 “(3) PROHIBITED CONDUCT.—Any provision of
14 this title (other than section 5 or paragraph (1) of
15 this subsection) which prohibits any act, practice, or
16 course of business if the mails or any means or in-
17 strumentality of interstate commerce is used in con-
18 nection therewith shall also prohibit any such act,
19 practice, or course of business by any derivatives
20 dealer registered or having filed notice under para-
21 graph (1) of this subsection or any person acting on
22 behalf of such derivatives dealer, irrespective of any
23 use of the mails or any means or instrumentality of
24 interstate commerce in connection therewith.

1 “(4) EXEMPTIONS.—The Commission, by rule
2 or order, upon the Commission’s own motion or
3 upon application, may conditionally or uncondition-
4 ally exempt any derivatives dealer, or class of deriva-
5 tives dealers, from any provision of this section, or
6 the rules thereunder, if the Commission finds that
7 such exemption is consistent with the public interest,
8 the protection of investors, and the purposes of this
9 title.

10 “(b) RULES.—

11 “(1) AUTHORITY.—The Commission shall pro-
12 pose and adopt rules to effect the purposes of this
13 title with respect to transactions in derivatives ef-
14 fected by derivatives dealers registered or required to
15 register under subsection (a)(1)(A) of this section as
16 follows:

17 “(A) FINANCIAL RESPONSIBILITY.—Such
18 rules shall provide safeguards with respect to
19 the financial responsibility and related practices
20 of such derivatives dealers including, but not
21 limited to, capital adequacy standards and the
22 carrying and use of customers’ deposits or cred-
23 it balances.

24 “(B) REPORTS.—Such rules shall require
25 every such derivatives dealer to make reports to

1 and furnish copies of records to the Commis-
2 sion, and to file with the Commission, annually
3 or more frequently, a balance sheet and income
4 statement certified by an independent public ac-
5 countant, prepared on a calendar or fiscal year
6 basis, and such other financial statements
7 (which shall, as the Commission specifies, be
8 certified) and information concerning its finan-
9 cial condition as required by such rules.

10 “(C) RECORDKEEPING.—Such rules shall
11 require records to be made and kept by such
12 derivatives dealers and shall specify the periods
13 for which such records shall be preserved.

14 “(2) AUTHORITY TO LIMIT DISCLOSURE OF IN-
15 FORMATION.—Notwithstanding any other provision
16 of law, the Commission shall not be compelled to
17 disclose any information required to be kept or re-
18 ported under rules adopted under paragraph (1) of
19 this subsection. Nothing in this paragraph shall au-
20 thorize the Commission to withhold information
21 from Congress, or prevent the Commission from
22 complying with a request for information from any
23 other Federal department or agency requesting the
24 information for purposes within the scope of its ju-
25 risdiction, or complying with an order of a court of

1 the United States in an action brought by the
2 United States or the Commission. For purposes of
3 section 552 of title 5, United States Code, this para-
4 graph shall be considered a statute described in sub-
5 section (b)(3)(B) of such section 552.

6 “(3) FRAUDULENT ACTS AND PRACTICES.—
7 With respect to any derivatives dealer, the Commis-
8 sion may, by rule or regulation define, and prescribe
9 means reasonably designed to prevent, such acts and
10 practices as are fraudulent, deceptive, or manipula-
11 tive.

12 “(4) COMPLIANCE WITH RULES UNDER THIS
13 SECTION.—No derivatives dealer shall make use of
14 the mails or any means or instrumentality of inter-
15 state commerce to effect any transaction in, or to in-
16 duce or attempt to induce the purchase or sale of,
17 any derivative in contravention of any rule under
18 this section.

19 “(c) ENFORCEMENT BY THE COMMISSION.—

20 “(1) ADMINISTRATIVE POWERS TO IMPOSE
21 SANCTIONS.—With respect to any derivatives dealer
22 registered or required to register under subsection
23 (a)(1)(A) of this section:

24 “(A) DERIVATIVES DEALERS.—The Com-
25 mission, by order, shall censure, place limita-

1 tions on the activities, functions, or operations
2 of, suspend for a period not exceeding 12
3 months, or revoke the registration of such de-
4 rivatives dealer, if it finds, on the record after
5 notice and opportunity for hearing, that such
6 censure, placing of limitations, suspension, or
7 revocation is in the public interest and that
8 such derivatives dealer, or any person associ-
9 ated with such derivatives dealer (whether prior
10 or subsequent to becoming so associated), has
11 committed or omitted any act or omission enu-
12 merated in subparagraph (A), (D), (E), or (G)
13 of paragraph (4) of section 15(b) of this title,
14 has been convicted of any offense specified in
15 subparagraph (B) of such paragraph (4) within
16 10 years of the commencement of the pro-
17 ceedings under this paragraph, or is enjoined
18 from any action, conduct, or practice specified
19 in subparagraph (C) of such paragraph (4).

20 “(B) SUSPENSION OR WITHDRAWAL PEND-
21 ING FINAL DETERMINATION.—Pending final de-
22 termination whether registration of any deriva-
23 tives dealer shall be revoked, the Commission,
24 by order, may suspend such registration, if such
25 suspension appears to the Commission, after

1 notice and opportunity for hearing, to be nec-
2 essary or appropriate in the public interest or
3 for the protection of investors. Any registered
4 derivatives dealer may, upon such terms and
5 conditions as the Commission may deem nec-
6 essary in the public interest or for the protec-
7 tion of investors, withdraw from registration by
8 filing a written notice of withdrawal with the
9 Commission. If the Commission finds that any
10 registered derivatives dealer is no longer in ex-
11 istence or has ceased to do business as a deriva-
12 tives dealer, the Commission, by order, shall
13 cancel the registration of such derivatives deal-
14 er.

15 “(C) ASSOCIATED PERSONS.—The Com-
16 mission, by order, shall censure or place limita-
17 tions on the activities or functions of any per-
18 son associated, or seeking to become associated,
19 with a derivatives dealer registered or required
20 to register under subsection (a)(1)(A) of this
21 section or suspend for a period not exceeding
22 12 months or bar any such person from being
23 associated with such a derivatives dealer, if the
24 Commission finds, on the record after notice
25 and opportunity for hearing, that such censure,

1 placing of limitations, suspension, or bar is in
2 the public interest and that such person has
3 committed or omitted any act or omission enu-
4 merated in subparagraph (A), (D), (E), or (G)
5 of paragraph (4) of section 15(b) of this title,
6 has been convicted of any offense specified in
7 subparagraph (B) of such paragraph (4) within
8 10 years of the commencement of the pro-
9 ceedings under this paragraph, or is enjoined
10 from any action, conduct, or practice specified
11 in subparagraph (C) of such paragraph (4).

12 “(2) PERSONS SUSPENDED OR BARRED FROM
13 ASSOCIATION.—It shall be unlawful for any person
14 as to whom an order entered pursuant to paragraph
15 (1) of this subsection suspending or barring him
16 from being associated with a derivatives dealer is in
17 effect willfully to become, or to be, associated with
18 a derivatives dealer without the consent of the Com-
19 mission, and it shall be unlawful for any derivatives
20 dealer to permit such a person to become, or remain,
21 a person associated with it without the consent of
22 the Commission, if such derivatives dealer knew, or,
23 in the exercise of reasonable care should have
24 known, of such order.

1 “(d) EXAMINATION OF RECORDS.—All records of a
2 derivatives dealer registered or required to register under
3 subsection (a)(1)(A) of this section, or that has filed notice
4 or is required to file notice under subsection (a)(1)(B) of
5 this section, are subject at any time, or from time to time,
6 to such reasonable periodic, special, or other examinations
7 by representatives of the Commission as the Commission
8 deems necessary or appropriate in the public interest, for
9 the protection of investors, or otherwise in furtherance of
10 the purposes of this title.

11 “(e) SECURITIES ASSOCIATION MEMBERSHIP.—

12 “(1) MEMBERSHIP REQUIREMENT.—It shall be
13 unlawful for any derivatives dealer registered or re-
14 quired to register with the Commission under sub-
15 section (a)(1)(A) of this section to effect any trans-
16 action in, or induce or attempt to induce the pur-
17 chase or sale of, any derivative, unless such deriva-
18 tives dealer is a member of a securities association
19 registered under section 15A of this title.

20 “(2) EXEMPTION.—The Commission, by rule or
21 order, as it deems consistent with the public interest
22 and the protection of investors, may conditionally or
23 unconditionally exempt from paragraph (1) of this
24 subsection any derivatives dealer or class of deriva-
25 tives dealers specified in such rule or order.

1 “(f) EXCLUSIVE JURISDICTION.—

2 “(1) IN GENERAL.—The Commission shall have
3 exclusive jurisdiction with respect to accounts, agree-
4 ments, transactions, and markets in derivatives (as
5 such term is defined in section 3(a)(65)).

6 “(2) CONFLICT OF LAWS.—In the event of a
7 conflict between any provision of, or regulation pre-
8 scribed under the securities laws, and any provision
9 of, or regulation prescribed under the Commodity
10 Exchange Act or the Commodity Futures Mod-
11 ernization Act of 2000, the provision of, or regula-
12 tion prescribed under the securities laws shall con-
13 trol.”.

14 **TITLE II—BROKER–DEALER**
15 **OVERSIGHT REFORMS**

16 **SEC. 201. DERIVATIVES ON SECURITIES.**

17 (a) AMENDMENT.—Section 3(a)(10) of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78c(a)(10)) is amended
19 by inserting “derivative,” after “any put, call, straddle,
20 option,” the first place it appears.

21 (b) USE OF EXEMPTIVE AUTHORITY.—Not later
22 than 180 days after the date of enactment of this Act,
23 the Securities and Exchange Commission shall, pursuant
24 to section 36 of the Securities Exchange Act of 1934 (15
25 U.S.C. 78mm) and the general exemptive authorities of

1 the other securities laws (as such term is defined in section
2 3(a) of such Act), prescribe such exemptions from treating
3 derivatives (as so defined) as securities (as so defined) as
4 are necessary or appropriate in the public interest and for
5 the protection of investors.

6 **SEC. 202. NATIONAL SECURITIES EXCHANGES.**

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

10 “(l) AUTHORITY TO ADOPT RULES RELATING TO
11 TRANSACTIONS IN DERIVATIVES.—A national securities
12 exchange may adopt and implement rules applicable to
13 members of such exchange, and material associated per-
14 sons that have filed notice or are required to file notice
15 under section 15F(a)(1)(B) of this title and that are asso-
16 ciated with members for which the exchange is the des-
17 igned examining authority, who engage in transactions
18 in derivatives—

19 “(1) to enforce compliance with applicable pro-
20 visions of this title and the rules and regulations
21 thereunder;

22 “(2) to provide that any such person shall be
23 appropriately disciplined for violations of applicable
24 provisions of this title and the rules and regulations
25 thereunder;

1 “(3) to provide for reasonable inspection and
2 examination of the books and records of any such
3 person;

4 “(4) to prevent fraudulent and manipulative
5 acts and practices;

6 “(5) to promote just and equitable principles of
7 trade; and

8 “(6) to require the establishment of, and adher-
9 ence to, appropriate internal controls structures.”.

10 **SEC. 203. FINANCIAL RESPONSIBILITY.**

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

13 (1) by striking “and” at the end of clause (A);
14 and

15 (2) by inserting after “requirements for all bro-
16 kers and dealers” the following: “, and (C) require
17 the maintenance of sufficient capital levels taking
18 into account the financial activities conducted by,
19 the customary sources of capital and funding of, and
20 the credit risk and aggregate leverage of, any deriva-
21 tives dealer that is a material associated person of
22 the broker or dealer and that has filed notice or is
23 required to file notice under section 15F(a)(1)(B) of
24 this title”.

1 **SEC. 204. REGISTERED SECURITIES ASSOCIATION.**

2 Section 15A of the Securities Exchange Act of 1934
3 (15 U.S.C. 78o-3) is hereby amended by adding at the
4 end the following new subsection:

5 “(n) **AUTHORITY TO ADOPT RULES RELATING TO**
6 **TRANSACTIONS IN DERIVATIVES.**—A registered securities
7 association may adopt and implement rules applicable to
8 members of such association, and material associated per-
9 sons that have filed notice or are required to file notice
10 under section 15F(a)(1)(B) of this title and that are asso-
11 ciated with members for which the association is the des-
12 igned examining authority, who engage in transactions
13 in derivatives—

14 “(1) to enforce compliance with applicable pro-
15 visions of this title and the rules and regulations
16 thereunder;

17 “(2) to provide that any such person shall be
18 appropriately disciplined, in accordance with sub-
19 sections (b)(7), (b)(8), and (h) of this section, for
20 violations of applicable provisions of this title and
21 the rules and regulations thereunder;

22 “(3) to provide for reasonable inspection and
23 examination of the books and records of any such
24 person;

25 “(4) to prevent fraudulent and manipulative
26 acts and practices;

1 “(5) to promote just and equitable principles of
2 trade; and

3 “(6) to require the establishment of, and adher-
4 ence to, appropriate internal controls structures.”.

5 **SEC. 205. RISK ASSESSMENT FOR GOVERNMENT SECURI-**
6 **TIES BROKERS AND DEALERS.**

7 Section 15C(b)(2) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78o-5(b)(2)) is amended—

9 (1) in subparagraph (A)—

10 (A) by striking “Such records shall de-
11 scribe, in the aggregate,” in the second sen-
12 tence and inserting “Such records may be re-
13 quired to describe”; and

14 (B) by striking “summary” in the third
15 sentence;

16 (2) by redesignating subparagraphs (C) through
17 (F) as subparagraphs (G) through (J), respectively;

18 (3) by inserting after subparagraph (B) the fol-
19 lowing new subparagraphs:

20 “(C) REPORTING BY HOLDING COMPANIES
21 AND OTHER MATERIAL ASSOCIATED PER-
22 SONS.—Every person, other than a natural per-
23 son, who is associated with a government secu-
24 rities broker or government securities dealer for
25 which the Commission is the appropriate regu-

1 latory agency, and whose business activities are
2 reasonably likely to have a material impact on
3 the financial or operational condition of such
4 registered person, including its net capital, its
5 liquidity, or its ability to conduct or finance its
6 operations, shall make such reports concerning
7 the associated person's policies, procedures, or
8 systems for monitoring and controlling the fi-
9 nancial and operational risks to the registered
10 person and its associated persons as the Sec-
11 retary, by rule, prescribes. Such reports may be
12 required to describe, without limitation, each of
13 the associated person's financial and securities
14 activities, and customary sources of capital and
15 funding. The Secretary, by rule, may require
16 such reports to be filed with the Commission no
17 more frequently than quarterly.

18 “(D) RECORDKEEPING BY HOLDING COM-
19 PANIES AND OTHER MATERIAL ASSOCIATED
20 PERSONS.—All persons subject to the reporting
21 requirements under subparagraph (C) of this
22 subsection shall keep and maintain such records
23 as are necessary to permit the Commission to
24 verify the information contained in reports filed

1 with the Commission pursuant to subparagraph
2 (C).

3 “(E) EXAMINATION OF HOLDING COMPA-
4 NIES AND OTHER MATERIAL ASSOCIATED PER-
5 SONS.—All records of persons subject to the re-
6 porting requirements contained in subpara-
7 graph (C) of this subsection are subject at any
8 time, or from time to time, to such reasonable
9 periodic, special, or other examinations by rep-
10 resentatives of the Commission as the Commis-
11 sion deems necessary or appropriate to verify
12 the information contained in reports filed with
13 the Commission pursuant to subparagraph (C).

14 “(F) USE OF ALTERNATIVE REPORTS BY
15 REGISTERED PERSONS AND THEIR HOLDING
16 COMPANIES AND OTHER MATERIAL ASSOCIATED
17 PERSONS.—(i) The Secretary, insofar as the
18 Secretary determines is consistent with the pur-
19 poses of this title, shall permit persons subject
20 to the reporting requirements of subparagraphs
21 (A) and (C) of this paragraph, to use reports
22 otherwise created and maintained to meet the
23 reporting requirements of those subparagraphs.

24 “(ii) The appropriate regulatory agency,
25 insofar as such agency determines is consistent

1 with the purposes of this title, shall permit per-
2 sons, subject to the reporting requirements of
3 subparagraph (B) of this paragraph, to use re-
4 ports otherwise created and maintained to meet
5 the reporting requirement of that subpara-
6 graph.”; and

7 (4) in subparagraphs (G) and (I) (as redesignig-
8 nated by paragraph (2)), by striking “subparagraph
9 (A)” each place it appears and inserting “subpara-
10 graphs (A) and (C)”.

11 **SEC. 206. RISK ASSESSMENT FOR BROKERS AND DEALERS.**

12 Section 17(h) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78q(h)) is amended—

14 (1) in paragraph (1)—

15 (A) by striking “Such records shall de-
16 scribe, in the aggregate,” in the second sen-
17 tence and inserting “Such records may be re-
18 quired to describe”; and

19 (B) by striking “summary” in the third
20 sentence;

21 (2) by redesignating paragraphs (3) through
22 (5) as paragraphs (7) through (9), respectively;

23 (3) by inserting after paragraph (2) the fol-
24 lowing new paragraphs:

1 “(3) REPORTING BY HOLDING COMPANIES AND
2 OTHER MATERIAL ASSOCIATED PERSONS.—Every
3 person, other than a natural person, who is associ-
4 ated with (A) a registered broker or dealer, or (B)
5 a registered municipal securities dealer for which the
6 Commission is the appropriate regulatory agency,
7 and whose business activities are reasonably likely to
8 have a material impact on the financial or oper-
9 ational condition of such registered person, including
10 its net capital, its liquidity, or its ability to conduct
11 or finance its operations, shall make such reports
12 concerning the associated person’s policies, proce-
13 dures, or systems for monitoring and controlling the
14 financial and operation risks to the registered person
15 and its associated persons as the Commission, by
16 rule, prescribes. Such reports may be required to de-
17 scribe, without limitation, each of the associated per-
18 son’s financial and securities activities, and cus-
19 tomary sources of capital and funding. The Commis-
20 sion, by rule, may require such reports to be filed
21 with the Commission no more frequently than quar-
22 terly.

23 “(4) RECORDKEEPING BY HOLDING COMPANIES
24 AND OTHER MATERIAL ASSOCIATED PERSONS.—All
25 persons subject to the reporting requirements under

1 paragraph (3) of this subsection shall keep and
2 maintain such records as are necessary to permit the
3 Commission to verify the information contained in
4 reports filed with the Commission pursuant to para-
5 graph (3).

6 “(5) EXAMINATION OF HOLDING COMPANIES
7 AND OTHER MATERIAL ASSOCIATED PERSONS.—All
8 records of persons subject to the reporting require-
9 ments contained in paragraph (3) of this subsection
10 are subject at any time, or from time to time, to
11 such reasonable periodic, special, or other examina-
12 tions by representatives of the Commission as the
13 Commission deems necessary or appropriate to
14 verify the information contained in reports filed with
15 the Commission pursuant to paragraph (3).

16 “(6) USE OF ALTERNATIVE REPORTS BY REG-
17 ISTERED PERSONS AND THEIR HOLDING COMPANIES
18 AND OTHER MATERIAL ASSOCIATED PERSONS.—The
19 Commission, insofar as it determines is consistent
20 with the purposes of this title, shall permit persons
21 subject to the reporting requirements of paragraphs
22 (1), (2), and (3) of this subsection, to use reports
23 otherwise created and maintained to meet the re-
24 porting requirements of those paragraphs.”; and

1 (4) in paragraphs (7) and (9) (as redesignated
2 by paragraph (2)), by striking “paragraph (1)” each
3 place it appears and inserting “paragraphs (1) and
4 (3)”.

5 **SEC. 207. LARGE TRADER REPORTING: RULEMAKING DEAD-**
6 **LINE.**

7 Within one year after the date of enactment of this
8 Act, the Securities and Exchange Commission shall take
9 all actions necessary to establish regulations pursuant to
10 section 13(h) of the Securities Exchange Act of 1934 (15
11 U.S.C. 78m(h)).

12 **SEC. 208. RULES, REGULATIONS, AND ORDERS; ANNUAL RE-**
13 **PORTS.**

14 Section 8(a) of the Market Reform Act of 1990 is
15 amended by striking “May 31, 1991, and annually there-
16 after until May 31, 1995,” and inserting “May 31, 2009,
17 and annually thereafter”.

18 **SEC. 209. CONFORMING AMENDMENTS.**

19 (a) DEFINITION OF BROKER OR DEALER.—Section
20 3(a)(48) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78c(a)(48)) is amended to read as follows:

22 “(48) The term ‘registered broker or dealer’
23 means a broker or dealer registered or required to
24 register pursuant to section 15 or 15B of this title,
25 except that—

1 “(A) in paragraph (3)(A) of this sub-
2 section and in section 6, the term means such
3 a broker or dealer or a government securities
4 broker or government securities dealer reg-
5 istered or required to register pursuant to sec-
6 tion 15C(a)(1)(A) of this title; and

7 “(B) in paragraph (3)(B) of this sub-
8 section and in section 15A, the term means
9 such a broker or dealer, a government securities
10 broker or government securities dealer reg-
11 istered or required to register pursuant to sec-
12 tion 15C(a)(1)(A) of this title, or a derivatives
13 dealer registered or required to register pursu-
14 ant to section 15F(a)(1)(A) of this title.”.

15 (b) REPEAL OF GLBA CHANGES.—

16 (1) DEFINITION OF BROKER.—Section
17 3(a)(4)(B) of such Act is amended by striking clause
18 (ix).

19 (2) DEFINITION OF DEALER.—Section
20 3(a)(5)(C) of such Act is amended by striking clause
21 (iv),

22 (3) REPEAL OF NEW HYBRID PRODUCT AU-
23 THORITY.—Section 15 of such Act (78 U.S.C. 78o)
24 is amended by striking subsection (i) as added by

1 section 205 of the Gramm-Leach-Bliley Act (113
2 Stat. 1391).

3 (4) IDENTIFIED BANKING PRODUCT DEFINI-
4 TION.—Section 206 of the Gramm-Leach-Bliley Act
5 (15 U.S.C. 78c) is amended—

6 (A) in subsection (a)—

7 (i) by inserting “; or” after the semi-
8 colon at the end of paragraph (5);

9 (ii) by striking “; or” at the end of
10 paragraph (5) and inserting a period; and

11 (iii) by striking paragraph (6);

12 (B) by striking subsection (b); and

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

15 **TITLE III—HEDGE FUND** 16 **REPORTING**

17 **SEC. 301. PUBLIC REPORTING BY UNREGISTERED HEDGE**
18 **FUNDS.**

19 Section 30 of the Investment Company Act of 1940
20 (15 U.S.C. 80a–29) is amended by adding at the end the
21 following new subsection:

22 “(k) REPORTS OF UNREGISTERED HEDGE FUNDS.—

23 “(1) FILING OF REPORTS.—No later than 15
24 days after the end of each calendar or fiscal quarter,
25 every unregistered hedge fund shall submit to the

1 Commission a report prepared in accordance with
2 United States generally accepted accounting prin-
3 ciples that includes the following information for
4 each pooled investment vehicle that is part of the
5 unregistered hedge fund:

6 “(A) A statement of financial condition as
7 of the end of the quarter.

8 “(B) A statement of income (loss) for the
9 quarter ended.

10 “(C) A statement of cash flows.

11 “(D) A statement of changes in equity.

12 “(E) A description of the models and
13 methodologies that the pooled investment vehi-
14 cle uses to calculate, assess, and evaluate mar-
15 ket risk.

16 “(F) Such other information and within
17 such time period as the Commission, in con-
18 sultation with the Secretary of the Treasury,
19 the Chairman of the Federal Reserve Board,
20 the Commodity Futures Trading Commission,
21 and other appropriate regulatory agencies, may
22 require by rule or regulation, as may be nec-
23 essary or appropriate in the public interest or
24 for the protection of investors, including infor-
25 mation about sudden changes in net asset value

1 of a pooled investment vehicle within the quar-
2 ter, the leverage ratio of the pooled investment
3 vehicle, and the total notional amount of the
4 pooled investment vehicle's exchange-traded and
5 over-the-counter derivatives positions.

6 “(2) RULEMAKING.—The Commission shall
7 have the authority to promulgate rules and regula-
8 tions, as may be necessary or appropriate in the
9 public interest or for the protection of investors, that
10 prescribe the form of the reports required by para-
11 graph (1) and define the terms used in this sub-
12 section.

13 “(3) AVAILABILITY OF REPORTS.—Upon receipt
14 of reports under paragraph (1), the Commission
15 shall—

16 “(A) immediately transmit complete copies
17 of the reports to the Secretary of the Treasury,
18 the Chairman of the Federal Reserve Board,
19 the Commodity Futures Trading Commission,
20 and other appropriate regulatory agencies; and

21 “(B) subject to paragraph (4), make the
22 reports widely available to the public.

23 “(4) CONFIDENTIALITY OF PROPRIETARY IN-
24 FORMATION.—Proprietary information contained in
25 reports shall be treated as follows:

1 “(A) If, in preparing a complete and accu-
2 rate report under paragraph (1), an unregis-
3 tered hedge fund includes in the report propri-
4 etary information concerning investment strate-
5 gies or positions, such proprietary information
6 may, consistent with the regulations prescribed
7 by the Commission, be segregated in a con-
8 fidential section of the report that shall not be
9 available to the public under paragraph (3)(B).

10 “(B) Nothing in this subsection shall au-
11 thorize the Commission to withhold information
12 from Congress, or prevent the Commission from
13 complying with a request for information from
14 any other Federal department or agency re-
15 questing the information for purposes within
16 the scope of its jurisdiction, or complying with
17 an order of a court of the United States in an
18 action brought by the United States or the
19 Board.

20 “(5) DEFINITIONS.—For purposes of this sub-
21 section:

22 “(A) UNREGISTERED HEDGE FUND.—The
23 term ‘unregistered hedge fund’—

1 “(i) means any pooled investment ve-
2 hicle, or group or family of pooled invest-
3 ment vehicles, that—

4 “(I) has total assets under man-
5 agement of \$1,000,000,000 or more;
6 and

7 “(II) is excepted from the defini-
8 tion of investment company by section
9 3(c)(1) or 3(c)(7), or is a foreign com-
10 pany that would be required to obtain
11 an order of the Securities and Ex-
12 change Commission under section
13 7(d) if it made a public offering of its
14 securities by use of the mails and
15 means or instrumentalities of inter-
16 state commerce; but

17 “(ii) does not include a commodity
18 pool operator or futures commission mer-
19 chant (as such terms are defined under
20 section 1a of the Commodity Exchange Act
21 (7 U.S.C. 1a)).

22 “(B) APPROPRIATE REGULATORY AGEN-
23 CIES.—The term ‘appropriate regulatory agen-
24 cies’ means each of the agencies that is an ap-
25 propriate regulatory agency under section

1 3(a)(34) of the Securities Exchange Act of
2 1934.”.

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