

# SIDE BY SIDE DERIVATIVES BILL COMPARISON

## Administration Bill

## House Agriculture Committee Bill

## House Financial Services Committee Bill (Frank Bill)

	<b>"Over the Counter Derivatives Markets Act of 2009"</b>	<b>"Derivatives Markets Transparency and Accountability Act"</b>	<b>"Over-the-Counter Derivatives Markets Act of 2009"</b>
<b>Mandatory Clearing</b>	Mandatory clearing of all standardized trades between "Major Swap Participants"	Mandatory clearing of all standardized trades, applicable only to swap dealers and "major swap participants"	Mandatory clearing of all standardized trades, applicable only to swap dealers and "major swap participants".
<b>Mandatory Exchange Trading</b>	Mandatory exchange trading of all standardized trades	A swap that must be cleared must be traded on an exchange or on an alternative swap execution facility (ASEF), which is defined to include electronic trade execution or confirmation facility or voice brokerage facility that meets enumerated core principles.	A swap that must be cleared must be traded on an exchange or on a swap execution facility (SEF). No definition of SEF, but similar enumeration of core principles.
<b>Ownership of Clearinghouses and ASEFs</b>	No applicable provisions	No applicable provisions	Dealers and major swap participants cannot in the aggregate own 20% or more of the beneficial interest in a swap execution facility (and probably a clearinghouse too, although the language of the Bill does not cover clearinghouse ownership).
<b>Standardization</b>	Determination made by CFTC and SEC - statute instructs them to define "as broadly as possible" with a presumption that if a single CCP accepts a trade for clearing it is "standardized"	A swap must be cleared if a derivatives clearing organization will accept it for clearing and the relevant regulator (CFTC for commodities, SEC for securities) requires it to be cleared	A swap must be cleared if a derivatives clearing organization will accept it for clearing. Prior approval from relevant regulator must be obtained before a clearinghouse can clear a new product.
<b>Scope of End User Exception</b>	Narrow - "Major Swap Participant" test covers anyone who has a "substantial net position" beyond FAS 133 Hedges	Broader - "major swap participant" must maintain "substantial net position" in outstanding swaps excluding those for hedging purposes OR has must have outstanding swaps that create "substantial net counterparty exposure that could have serious adverse effect on financial stability of US banking system or financial markets."	Broader - "major swap participant" must maintain "a substantial net position in outstanding swaps excluding hedging and risk management transactions" or must have swaps that create "substantial net counterparty exposure that would expose counterparties to significant credit losses that could have a material adverse effect on capital of counterparties."
<b>Primary Regulator of Derivatives Dealers</b>	CFTC and SEC jointly with Bank Regulator "Floor"	Commodity swap dealers and major swap participants must register with CFTC, and security swap dealers and major swap participants must register with SEC. In addition, bank regulators retain oversight of bank dealers.	Commodity swap dealers and major swap participants must register with CFTC, and security swap dealers and major swap participants must register with SEC. In addition, bank regulator retains oversight of bank dealers.
<b>Capital and Margin Requirements</b>	Mandated higher capital and margin requirements including capital charges "above zero" for trades that are cleared and mandatory initial and variation margin requirements.	Regulators to set initial and variation margin on non-cleared trades between dealers and major swap participants. In addition, dealers must set aside amounts to cover exposures on other non-cleared trades.	Cleared transactions subject to >0 capital requirement, non-cleared trades subject to higher requirements. Mandatory initial and variation margin on interdealer/MSP trades. Bank regulator and SEC/CFTC may require margin for end user trades.

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<b>Business Conduct Requirements</b>	Mandated business conduct requirements covering anti fraud and manipulation, fee and profitability disclosure, documentation and back office standards and compliance with position limits	Mandated business conduct requirements covering anti-fraud, truth in marketing, and valuations	Mandated business conduct requirements covering anti fraud and manipulation, valuations, and potential conflicts of interest.
<b>Limits on Exemptive Authority</b>	CFTC and SEC have no authority to grant exemptions unless specifically authorized to do so	CFTC prohibited from granting exemptions to certain provision, SEC prohibiting from granting any exemptions unless expressly authorized	CFTC and SEC have broad authority to grant exemptions consistent with purposes of Act.
<b>Reporting to Trade Repositories</b>	All trades not cleared must be reported to a trade repository	All trades not cleared must be reported to a trade repository	All trades not cleared must be reported to a trade repository
<b>Provisions on Security Based Swaps</b>	Detailed provisions applicable to Security Based Swaps, in particular concerning application of Sections 13 and 16 of 1934 Securities Exchange Act	Security-based swaps are "securities" for 33 and 34 Act purposes. Sections 13 and 16 of 34 Act apply to positions in security-based swaps.	Security-based swaps are "securities" for 33 Act, but not for 34 Act. Sections 13 and 16 of 34 Act apply only if SEC determines that the swap provides "incidents of ownership" comparable to directly owning the stock and that it is necessary to achieve purposes of Section 13.
<b>Position Limits</b>	CFTC and SEC are authorized to establish position limits with respect to OTC derivatives and security-based swaps, respectively, that perform a significant price discovery function with respect to regulated markets.	CFTC to set aggregate position limit across OTC and exchange positions, very limited ability to obtain hedge exemptions.	CFTC can set position limits on OTC commodity swaps, but positions taken primarily for hedging or risk management purposes shall be excluded from those limits. CFTC to define "hedging" and "risk management."
<b>Provisions Specific to "Naked CDS"</b>	No applicable provisions	No applicable provisions	CFTC and SEC may collect information as may be necessary for any types of swaps and issue a report with respect to swaps that the CFTC and SEC find are detrimental to the stability of a financial market or a participant,