

2nd

Rev
129

AMENDMENT TO H.R. 4173

**OFFERED BY MR. MURPHY OF NEW YORK, MR.
MCMAHON OF NEW YORK, AND MR.
KRATOVIL OF MARYLAND**

At the end of title III, insert the following new section:

1 **SEC. ____ . DEFINITIONS OF MAJOR SWAP PARTICIPANT**
2 **AND MAJOR SECURITY-BASED SWAP PARTICI-**
3 **PANT.**

4 (a) MAJOR SWAP PARTICIPANT.—Section 1a(39) of
5 the Commodity Exchange Act (7 U.S.C. 1a), as added by
6 the preceding provisions of this Act, is amended to read
7 as follows:

8 “(39) MAJOR SWAP PARTICIPANT.—

9 “(A) IN GENERAL.—The term ‘major swap
10 participant’ means any person who is not a
11 swap dealer, and—

12 “(i) maintains a substantial net posi-
13 tion in outstanding swaps, excluding posi-
14 tions held primarily for hedging, reducing
15 or otherwise mitigating its commercial
16 risk; or

1 “(ii) whose outstanding swaps create
2 substantial net counterparty exposure that
3 could have serious adverse effects on the
4 financial stability of the United States
5 banking system or financial markets.

6 “(B) DEFINITION OF SUBSTANTIAL NET
7 POSITION.—The Commission shall define by
8 rule or regulation the term ‘substantial net po-
9 sition’ at a threshold that the Commission de-
10 termines prudent for the effective monitoring,
11 management, and oversight of entities which
12 are systemically important or can significantly
13 impact the financial system. In setting the defi-
14 nitions, the Commission shall consider the per-
15 son’s relative position in uncleared as opposed
16 to cleared swaps.

17 “(C) A person may be designated a major
18 swap participant for 1 or more individual types
19 of swaps without being classified as a major
20 swap participant for all classes of swaps.”.

21 (b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—
22 Section 3(a)(67) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)), as added by the preceding provisions
24 of this Act, is amended to read as follows:

1 “(67) MAJOR SECURITY-BASED SWAP PARTICI-
2 PANT.—

3 “(A) IN GENERAL.—The term ‘major secu-
4 rity-based swap participant’ means any person
5 who is not a security-based swap dealer, and—

6 “(i) maintains a substantial net posi-
7 tion in outstanding security-based swaps,
8 excluding positions held primarily for hedg-
9 ing, reducing or otherwise mitigating its
10 commercial risk; or

11 “(ii) whose outstanding security-based
12 swaps create substantial net counterparty
13 exposure that could have serious adverse
14 effects on the financial stability of the
15 United States banking system or financial
16 markets.

17 “(B) DEFINITION OF SUBSTANTIAL NET
18 POSITION.—The Commission shall define by
19 rule or regulation the term ‘substantial net po-
20 sition’ at a threshold that the Commission de-
21 termines prudent for the effective monitoring,
22 management, and oversight of entities which
23 are systemically important or can significantly
24 impact the financial system. In setting the defi-
25 nitions, the Commission shall consider the per-

1 son's relative position in uncleared as opposed
2 to cleared security-based swaps.

3 "(C) A person may be designated a major
4 security-based swap participant for 1 or more
5 individual types of security-based swaps without
6 being classified as a major security-based swap
7 participant for all classes of security-based
8 swaps."

9 (c) EFFECTIVE DATES.—

10 (1) MAJOR SWAP PARTICIPANT.—The amend-
11 ment made by subsection (a)(1) shall take effect as
12 if included in subtitle A.

13 (2) MAJOR SECURITY-BASED SWAP PARTICI-
14 PANT.—The amendment made by subsection (a)(2)
15 shall take effect as if included in subtitle B.

