

AMENDMENT TO H.R. 4173
OFFERED BY MR. STUPAK OF MICHIGAN

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

1 **SEC. _____. AUTHORITY TO BAN ABUSIVE SWAPS.**

2 The Commodity Futures Trading Commission and
3 the Securities and Exchange Commission may jointly, by
4 rule or order, prohibit transactions in any swap (as de-
5 fined in section 1a(35) of the Commodity Exchange Act)
6 or security-based swap (as defined in section 1a(38) of
7 such Act) which the Commodity Futures Trading Com-
8 mission and the Securities Exchange Commission find
9 would be detrimental to the stability of a financial market
10 or of participants in a financial market.

11 **SEC. _____. ELIMINATION OF CONSIDERATION OF BAL-**
12 **ANCE SHEET RISK IN DETERMINING THE**
13 **COMMERICAL RISK OF BONA FIDE HEDGING**
14 **END USERS.**

15 (a) Section 1a(39)(A)(i) of the Commodity Exchange
16 Act (7 U.S.C. 1a), as added by the preceding provisions
17 of this Act, is amended by striking “and balance sheet”.

1 (b) Section 2(j)(8)(A)(ii) of the Commodity Exchange
2 Act (7 U.S.C. 2), as added by the preceding provisions
3 of this Act, is amended by striking “or balance sheet”.

4 (c) Section 3(a)(67)(A)(i) of the Securities Exchange
5 Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding
6 provisions of this Act, is amended by striking “and bal-
7 ance sheet”.

8 (d) Section 3B(h)(1)(B) of the Securities Exchange
9 Act of 1934, as added by the preceding provisions of this
10 Act, is amended by striking “and balance sheet”.

11 (e)(1) The amendments made by subsections (a) and
12 (b) shall take effect as if included in subtitle A.

13 (2) The amendments made by subsections (c) and (d)
14 shall take effect as if included in subtitle B.

15 **SEC. _____ . LEGAL CERTAINTY OF CERTAIN SWAP CON-**
16 **TRACTS.**

17 (a) **IN GENERAL.**—Section 22(a) of the Commodity
18 Exchange Act (7 U.S.C. 25(a)), as amended by the pre-
19 ceding provisions of this Act, is amended—

20 (1) in paragraph (4)(A), by inserting “, and en-
21 tered into before the effective date of this para-
22 graph,” after “investor”;

23 (2) in paragraph (4)(B), by inserting “, and en-
24 tered into before the effective date of this para-

1 graph,” after “between eligible contract partici-
2 pants”; and

3 (3) in paragraph (5), by inserting “, and en-
4 tered into before the effective date of this para-
5 graph,” after “United States”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect as if included in subtitle A.

