

Criminal Provisions in the Dodd-Frank Wall Street Reform & Consumer Protection Act¹

S. 3217 introduced by Senator Dodd (D-CT)

H.R. 4173 introduced by Barney Frank (D-MASS)

(all references herein are to the bill as presented in the Enrolled Bill H.R. 4173.ENR

[Final as Passed Both House and Senate])

Sec. 202(a)(1)(C). Disclosure of Negative Risk Determinations about Financial Company.

Language from the bill:

“A person who recklessly discloses a determination of the Secretary under section 203(b) or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than \$250,000, or imprisoned for not more than 5 years, or both.”² [Pg. 69, 71]

Compare to Other Code Provisions: Other comparable disclosure provisions have either a different *mens rea* requirement, are limited to a class of defendants, or have civil penalties. Examples:

- 26 U.S.C. § 7216 → Misdemeanor for a tax preparer to “recklessly disclose” information provided to prepare an individual’s taxes.
- 42 U.S.C. § 3537a → Criminal penalty for “willful” advance disclosure of HUD funding decisions. Limited to disclosures to applicants and their agents.
- 42 U.S.C. § 300i-2 → Misdemeanor for “knowingly and recklessly” revealing a vulnerability assessment. Limited in application to a set class of individuals.
- 42 U.S.C. § 299b-22 → Civil penalty for “reckless” disclosure of certain privileged patient health information.

¹ This document, amended on July 22, 2010, is a good-faith attempt to set forth the criminal provisions present in the Dodd-Frank Wall Street Reform & Consumer Protection Act, as presented in the Enrolled Bill, H.R. 4173.ENR [Final as Passed Both House and Senate]. The bill is over 800 single-spaced pages long, however, and the authors cannot guarantee that this document sets forth all such provisions.

² Sec. 203 (b), entitled “Systemic Risk Determination... Determination by the Secretary,” establishes that the Secretary should take action under Section 202 if the Secretary determines a financial company is failing or in danger of failing, if the failure would have serious adverse effects on U.S. financial stability, and a variety of other factors. [Pg. 75-76]

Sec. 723. Clearing.

Language from the bill:

Sec. 723(a)(2) amends 7 U.S.C. § 2 by adding the following provision:

“(e) Limitation on Participation. – It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.” [Pg. 300]

Related U.S. Code Enforcement Provision(s):

The new offense in Sec. 723 would most likely be governed by 7 U.S.C. § 13(a)(5), which states that “[i]t shall be a felony punishable by a fine of not more than \$1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for... Any person willfully to violate any other provision of this chapter, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation.”

Sec. 724. Swaps; Segregation and Bankruptcy Treatment.

Language from the bill:

Sec. 724(a) amends 7 U.S.C. § 6d by adding the following provision:

“(f) (1) Registration Requirement. – It shall be unlawful for any person to accept any money, securities, or property (or to extend any credit in lieu of money, securities, or property) from, for, or on behalf of a swaps customer to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the customer as the result of such a swap), unless the person shall have registered under this Act with the Commission as a futures commission merchant, and the registration shall not have expired nor been suspended nor revoked.” [Pg. 307]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 724. Swaps; Segregation and Bankruptcy Treatment.

Language from the bill:

Sec. 724(a) amends 7 U.S.C. § 6d by adding the following provision:

“(f) (6) Prohibition. – It shall be unlawful for any person, including any derivatives clearing organization and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (2) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the swaps customer of the futures commission merchant.”

[Pg. 307, 309]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 728. Swap Data Repositories; Registration Requirement.

Language from the bill:

Sec. 728 would add a section to the existing Commodity Exchange Act:

“Sec. 21(a)(1). Swap Data Repositories. – (a) Registration Requirement. – (1) In General. – It shall be unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap data repository.” **[Pg. 322]**

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Compare to Other Code Provisions: This offense is drafted in a broader manner than many other provisions that have prohibitions on certain actions if one is not registered (see offenses in Sec. 723 and 724).

Sec. 730. Large Swap Trader Reporting.

Language from the bill:

Sec. 730 adds a section that would be codified as 7 U.S.C. § 6o-4, reading:

“Large Swap Trader Reporting. – (a) Prohibition. –

(1) In General. – Except as provided in paragraph (2), it shall be unlawful for any person to enter into any swap that the Commission determines to perform a significant price discovery function with respect to registered entities if – (A) the person directly or indirectly enters into the swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and (B) the person directly or indirectly has or obtains a position in the swap equal to or in excess of such amount as shall be established periodically by the Commission.

(2) Exception. – Paragraph (1) shall not apply if – (A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and (B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.” [Pg. 327-328]

Related U.S. Code Enforcement Provision(s):

The offense in Sec. 730 of H.R. 4173eas would be codified in Chapter 1 of the Commodity Exchange Act as 7 U.S.C. § 6o-4. Therefore, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 731. Registration and Regulation of Swap Dealers and Major Swap Participants.

Language from the bill:

Sec. 731 adds a section that would be codified as 7 U.S.C. § 6o-3, stating:

“Registration and Regulation of Swap Dealers and Major Swap Participants. – (a) Registration. –

(1) Swap Dealers. – It shall be unlawful for any person to act as a swap dealer unless the person is registered as a swap dealer with the Commission.

(2) Major Swap Participant. – It shall be unlawful for any person to act as a major swap participant unless the person is registered as a major swap participant with the Commission.” [Pg. 328]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 733. Swap Execution Facilities.

Language from the bill:

Sec. 733 adds a section that would be codified as 7 U.S.C. § 7b-3, stating:

“Swap Execution Facilities. – (a) Registration. – (1) In General. – No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.” [Pg. 337]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 741. Enforcement.

Language from the bill:

Sec. 741(B) adds “swap” to the various enforcement provisions that already exist in the U.S. code. Specifically, 7 U.S.C. §§ 6b, 6c, 9, 13, 13a-1, 13b. [Pg. 354-357]. These amendments expand current law to another type of financial instrument.

Language from the bill:

Sec. 741 also amends 7 U.S.C. § 6b to include the following new provision:

“(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof) –

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.” [Pg. 354, 356]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 746. Insider Trading.

Language from the bill:

Sec. 746 amends 7 U.S.C. § 6c(a) by adding two new provisions:

“(3) Contract of Sale. – It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into – (A) a contract of sale of a commodity for future delivery (or option on such a contract); (B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or (C) a swap.” [Pg. 362-363]

“(4) Nonpublic Information. – (A) Imparting of Nonpublic Information. – It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the

employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into – (i) a contract of sale of a commodity for future delivery (or option on such a contract); (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or (iii) a swap.” **[Pg. 363]**

“(4) Nonpublic Information. – (B) Knowing Use. – It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into – (i) a contract of sale of a commodity for future delivery (or option on such a contract); (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or (iii) a swap.” **[Pg. 363]**

“(4) Nonpublic Information. – (C) Theft of Nonpublic Information. – It shall be unlawful for any person to steal, convert, or misappropriate, by any means whatsoever, information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, where such person knows, or acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into – (i) a contract of sale of a commodity for future delivery (or option on such a contract); (ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or (iii) a swap.

Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or swap described in clauses (i), (ii) or (iii).” **[Pg. 363-364]**

Related U.S. Code Enforcement Provision(s):

These offenses would be codified in Chapter 1, as 7 U.S.C. § 6c(a)(3) and (a)(4). Therefore, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Compare to Other Code Provisions:

7 U.S.C. § 13(e) establishes two types of insider trading –

- 7 U.S.C. § 13(e)(1) is limited to those who are insiders and who “willfully and knowingly” trade upon or disclose “any material nonpublic information obtained through special access related to the performance of such duties.”
- 7 U.S.C. § 13(e)(2) applies to “any person” but is limited to “willfully and knowingly” trading upon the basis of any “material nonpublic information that such person knows was obtained in violation of paragraph (1) from [an insider].”

The first three of these newly proposed offenses appear broader and vaguer than other insider trading prohibitions currently in the code. These proposed offenses expand coverage beyond insiders and to information that “may affect or tend to affect the price”

Sec. 747. Antidisruptive Practices Authority.

Language from the bill:

Sec. 747 amends 7 U.S.C. § 6c(a) by adding the following new provision:

“(5) Disruptive Practices. – It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that – (A) violates bids or offers; (B) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; or (C) is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” **[Pg. 364]**

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 747. Antidisruptive Practices Authority.

Language from the bill:

Sec. 747 also amends 7 U.S.C. § 6c(a) by adding the following new provision:

“(7) Use of Swaps to Defraud. – It shall be unlawful for any person to enter into a swap knowing or acting in reckless disregard of the fact, that its counterparty will use the swap as part of a device, scheme, or artifice to defraud any third party.” [Pg. 364]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 7 U.S.C. § 13(a)(5), any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Compare to Other Code Provisions:

Federal law already provides for aider and abettor criminal liability (18 U.S.C. § 2).

Sec. 753. Anti-Manipulation Authority. (b) Cease and Desist Orders, Fines.

Language from the bill:

Section 753(b) amends 7 U.S.C. § 136 to read as follows:

“(d) If any person (other than a registered entity), is violating or has violated subsection (c) or any other provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in subsection (c), make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall knowingly fail or refuse to obey or comply with such order, such person, upon conviction thereof, shall be fined not more than the higher of \$140,000 or triple the monetary gain to such person, or imprisoned for not more than 1 year, or both, except that if such knowing failure or refusal to obey or comply with such order involves any offense within subsection (a) or (b) of section 9, such person, upon conviction thereof, shall be subject to the penalties of said subsection (a) or (b): Provided, That any such cease and desist order under this subsection against any respondent in any case of manipulation shall be issued only in conjunction with an order issued against such respondent under subsection (c).” [Pg. 375, 378-379]

Compare to current text of 7 U.S.C. §136:

The current text contains no *mens rea* requirements. This amendment adds the *mens rea* terms “knowingly” and “knowing.” In addition, it removes the minimum sentence of six months where a sentence is imposed. Amongst other changes, it also deletes the language deeming each day of violation a separate offense and the categorization of offenses as a misdemeanor or felony.

Sec. 764. Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants.

Language from the bill:

This would be one of the provisions enacted by Sec. 764 as described above. Specifically, 15 U.S.C. § 78o-8(l)(4) would read:

“(4) Unlawful Conduct. – It shall be unlawful –

- (A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or
- (B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.” [Pg. 409, 421]

Related U.S. Code Enforcement Provision(s):

Under 15 U.S.C. § 78ff, any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule or regulation.”

Sec. 768. Amendments to the Securities Act of 1933; Treatment of Security-Based Swaps.

Language from the bill:

Sec. 768(b) amends 15 U.S.C. § 77e by adding the following provision:

“(d) Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act (7 U.S.C. § 1a(18)).” [Pg. 425-426]

Related U.S. Code Enforcement Provision(s):

15 U.S.C. § 77x – Provides a criminal penalty for willful violations of any provision, or rule or regulation issued under a provision, codified in Subchapter I of Chapter 2A. The offense in Sec. 768 of H.R. 4173eas would be codified in Subchapter I of Chapter 2A. Unlike many other penalty portions of the U.S. Code enforcement provisions, 15 U.S.C. § 77x does not include the defense to prison time for those who prove a lack of knowledge of the rule (compare to 15 U.S.C. § 78ff).

Compare to Other Code Provisions: This offense is drafted in a broader manner than many other provisions that have prohibitions on certain actions if one is not registered (see offenses in Sec. 723 and 724).

Sec. 929. Unlawful Margin Lending.

Language from the bill:

Amends 15 U.S.C. § 78g(c)(1)(A) by striking “; and” and inserting “; or” to read as follows:

“(c) Unlawful credit extension to customers – (1) Prohibition – It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer –

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the “Board”) shall prescribe under subsections (a) and (b) of this section; **or**

(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board may prescribe –

(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board; and

(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A).” [Pg. 477]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 15 U.S.C. § 78ff, a prison sentence cannot be imposed if the person “proves that he had no knowledge of such rule or regulation.”

Additional Notes:

The essence of this one word switch is that it splits up what formerly was two elements of one violation into two separate violations.

Sec. 934. Referring Tips to Law Enforcement or Regulatory Authorities.

Language from the bill:

Amends 15 U.S.C. § 78o-7 by adding the following provision:

“(u) Duty to report tips alleging material violations of law. –

(1) Duty to report. – Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives from a third party and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a material violation of law that has not been adjudicated by a Federal or State court.

(2) Rule of construction. – Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).” [Pg. 509]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 15 U.S.C. § 78ff, a prison sentence cannot be imposed if the person “proves that he had no knowledge of such rule or regulation.”

Sec. 975. Regulation of Municipal Securities and Changes to the Board of the MSRB.

Language from the bill:

Sec. 975(a)(1) adds the following provision to 15 U.S.C. § 78o-4(a)(1):

“(b) It shall be unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered in accordance with this subsection.” [Pg. 540-541]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 15 U.S.C. § 78ff, a prison sentence cannot be imposed if the person “proves that he had no knowledge of such rule of regulation.”

Sec. 975. Regulation of Municipal Securities and Changes to the Board of the MSRB.

Language from the bill:

Sec. 975(a)(5) adds the following provision to 15 U.S.C. § 78o-4(a)(5):

“(5) No municipal advisor shall make use of the mails or any means or instrumentality of interstate commerce to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products, the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, in connection with which such municipal advisor engages in any fraudulent, deceptive, or manipulative act or practice.” [Pg. 540-541]

Related U.S. Code Enforcement Provision(s):

As previously explained, under 15 U.S.C. § 78ff, any willful violation would be criminally punishable, but a custodial prison sentence would not be imposed if the person “proves that he had no knowledge of such rule or regulation.”

Compare to Other Code Provisions: There are provisions already in existence that are similar to this one. For example:

- 15 U.S.C. § 78j, titled “Manipulative and deceptive devices,” prohibits the use of “any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe”

Unlike 15 U.S.C. § 78j, the offense proposed by Sec. 975(a)(5) is broader in that it is not limited by the rules and regulations of the Commission.

Sec. 1036. Prohibited Acts.

Language from the bill:

Adds the following provision –

“(a) In General. – It shall be unlawful for –

(1) any covered person or service provider –

(A) to offer or provide to a consumer any financial product or service not in conformity with Federal consumer financial law, or otherwise commit any act or omission in violation of a Federal consumer financial law; or

(B) to engage in any unfair, deceptive, or abusive act or practice,

(2) any covered person or service provider to fail or refuse, as required by Federal consumer financial law, or any rule or order issued by the Bureau thereunder –

(A) to permit access to or copying of records;

(B) to establish or maintain records; or

(C) to make reports or provide information to the Bureau; or

(3) any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the provisions of section 1031, or any rule or order issued thereunder, and notwithstanding any provision of this title, the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

(b) Exception. – No person shall be held to have violated this subsection (a)(1) solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement.”

[Pg. 635-636]

Additional Notes:

The bill does not appear to suggest a codification for this provision. It is unclear what criminal penalty provisions would attach to violations of these provisions.

Note: The below portions of the bill repeat many of the above provisions.

Sec. 763. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

Language from the bill:

Sec. 763. Amendments to the Securities Exchange Act of 1934. Amends 15 U.S.C. § 78a *et seq.* by inserting after Section 3B (as added by section 717 of this Act) a Section 3C, titled “Clearing for Security-Based Swaps,” Section 3D, titled “Security-Based Swap Execution Facilities, and Section 3E, titled “Segregation of Assets Held as Collateral in Security-Based Swap Transactions,” which include a reiteration of parts of Sections 711-753 for “security-based swap agreements.” **[Pg. 387-409]**

Sec. 764. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

Language from the bill:

Sec. 764. Registration and Regulation of Security-Based Swap Dealers and Major Security-Based Swap Participants. Amends 15 U.S.C. 78a *et seq.* by inserting after Section 25E (15 U.S.C. § 78o-7), Section 15F, which includes a reiteration of parts of Sections 711-753 for “security-based swap agreements.” **[Pg. 409-421]**