111TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
111–370

PROVIDING FOR FURTHER CONSIDERATION OF THE BILL (H.R. 4173) TO PROVIDE FOR FINANCIAL REGULATORY REFORM, TO PROTECT CONSUMERS AND INVESTORS, TO ENHANCE FEDERAL UNDERSTANDING OF INSURANCE ISSUES, TO REGULATE THE OVER-THE-COUNTER DERIVATIVES MARKETS, AND FOR OTHER PURPOSES

DECEMBER 10, 2009.—Referred to the House Calendar and ordered to be printed

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Mr. PERLMUTTER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 964]

The Committee on Rules, having had under consideration House Resolution 964, by a record vote of 8–3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for further consideration of H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009," under a structured rule. The resolution provides that there will be no additional general debate. The resolution waives all points of order against provisions in the bill, as amended (this waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure). The resolution provides that the bill, as amended, shall be considered as read. The resolution makes in order only those amendments printed in this report and the amendments en bloc described in section 3 of the resolution. The resolution provides that the amendments made in order may be offered only in the order printed in this report (except as specified in section 4), may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The resolution waives all points of order against the amendments printed in this report or amendments en bloc except for clauses 9 and 10 of rule XXI.

The resolution provides that the chair of the Committee on Financial Services or his designee may offer amendments en bloc consisting of amendments printed in this report not earlier disposed

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of. Amendments en bloc shall be considered as read, shall be debatable for 20 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question. The original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

The resolution provides that the Chair of the Committee of the Whole may recognize for consideration of any amendment printed in this report out of the order printed, but not sooner than 30 minutes after the chair of the Committee on Financial Services or his designee announces from the floor a request to that effect. In the case of sundry amendments reported from the Committee, the question of their adoption shall be put to the House en gros and without division of the question. The resolution provides one motion to recommit with or without instructions.

The resolution also provides that the Chair may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee. It also provides that the Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII). The resolution provides that during consideration of the bill, the Chair may reduce to two minutes the minimum time for electronic voting. The resolution provides that in the engrossment of the bill, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against the bill, as amended, the Committee is not aware of any points of order. The waiver is prophylactic.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 290

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Dreier.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Harman (CA), #23, which would allow depositors in any institution for which the FDIC was appointed as receiver or conservator on July 11, 2008 (IndyMAC) to be compensated for uninsured deposits up to the new FDIC insurance limit of $250,000. The insurance would be offset with CFPA funds.

Results: Defeated 4–8.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 291

Date: December 10, 2009.
Measure: H.R. 4173.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Boren (OK), Capito (WV), McMahon (NY), Miller, Gary (CA), #78, which would direct the appropriate agency to define a category of low risk mortgages that would be exempt from the risk retention provisions found within the bill. The current language in the bill allows the newly formed agency to define such a mortgage; this amendment would require it.
Results: Defeated 4–9.
Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 292

Date: December 10, 2009.
Measure: H.R. 4173.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Garrett (NJ), #236, which would strike new Federal Reserve authorities and responsibilities in the bill.
Results: Defeated 4–9.
Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 293

Date: December 10, 2009.
Measure: H.R. 4173.
Motion by: Mr. Dreier.
Summary of motion: To make in order and provide appropriate waivers for the amendments, en bloc, each separately debatable for 10 minutes, by Rep. McCarthy, Kevin (CA), #167, which would restrict the CFPA from having authority over Veterans' benefits programs or the provisions of the Servicemembers Civil Relief Act; and by Rep. Bean, #141, which would provide that the Comptroller of the Currency may assess the individual state laws and/or regulations under the CFPA and if they provide a high protective standard, and may make a determination that such standard be the uniform national standard. If a majority of states file petitions, CFPA is forced to consider raising the federal standard. If an institution is not chartered federally as a national bank or Federal savings associations (non-bank subs and affiliates are state chartered), then it cannot receive federal preemption. The amendment does not seek to limit any of the new powers the State AGs receive under this bill (Section 4402) or limit the State AG visitorial sections beyond matching Cuomo. Makes changes to sections dealing with the relationship between national banks/Federal savings associations and state laws to match the true pre-2004 standard.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 294

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Bachmann (MN), #192, which would prohibit employees and former employees of organizations that have been indicted of Federal or State election law violations from serving on the Consumer Financial Protection Oversight Board.

Results: Defeated 4–9.

Vote by Members: McGovern—Nay; Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Dreier—Yea; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 295

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Diaz-Balart.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Lance (NJ), McCarthy, Kevin (CA), Paulsen (MN), #196, which would prohibit the secretary from extending the TARP program, prohibit any unused authorization under TARP from being used for any further purpose that would increase the national debt, and direct any repaid funds be used only for reducing the national debt.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 296

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Sessions (TX), #86, which would clarify that none of the registration requirements or other requirements on investment advisers of private funds shall be construed as creating a private right of action.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 297

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Sessions (TX), #150, which would make the bill ineffective if it is determined to cause the loss of over 1 million jobs; the Comptroller General of the United States has 30 days to determine the net job loss.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 298

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Garrett (NJ), #237, which would require that all current and future Fed 13(3) programs be moved on-budget.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 299

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Dr. Foxx.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Reps. Jenkins (KS), Paulsen (MN), #18, which would add a new section which bans government funds from being used for a bailout or for any other purpose, other than a Federal agency's administrative costs.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 300

Date; December 10, 2009.

Measure; H.R. 4173.

Motion by: Dr. Foxx.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. McHenry (NC), #98, which would clarify that nothing under Title 4 shall be construed to create a private right of action.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 301

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Dr. Foxx.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Perlmutter (CO), #177, which would strengthen the exemption for smaller banks and credit unions allowing their consumer protection oversight to remain with their current regulator.

Results: Defeated 4–7.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Yea; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 302

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Dr. Foxx.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Price, Tom (GA), #35, which would strike all sections in the bill which restrict the use of arbitration.

Results: Defeated 3–8.

Vote by Members: Hastings—Nay; Matsui—Nay; Cardoza—Nay; Arcuri—Nay; Perlmutter—Nay; Pingree—Nay; Polis—Nay; Diaz-Balart—Yea; Sessions—Yea; Foxx—Yea; Slaughter—Nay.

Rules Committee record vote No. 303

Date: December 10, 2009.

Measure: H.R. 4173.

Motion by: Mr. McGovern.

Summary of motion: To report the rule.

Results: Adopted 8–3.

Vote by Members: Hastings—Yea; Matsui—Yea; Cardoza—Yea; Arcuri—Yea; Perlmutter—Yea; Pingree—Yea; Polis—Yea; Diaz-Balart—Nay; Sessions—Nay; Foxx—Nay; Slaughter—Yea.

SUMMARY OF AMENDMENTS TO BE MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Frank (MA): The manager's amendment to The Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173) provides for clarifications to Title I (the Financial Stability Improvement Act), Title IV (the Consumer Financial Protection Agency Act), Title V (Capital Markets), Title VI (Federal Insurance Office), and the Mortgage Reform and Anti-Predatory Lending Act (to be added as Title VII). Also included are provisions to provide mortgage assistance to unemployed homeowners and assistance for the purchase and repair of foreclosed properties with an emphasis on increasing the supply of affordable rental housing. It includes a provision to make the amendment PAYGO compliant. Further, the amendment: (1) Would add the head of the CFPA to the Financial Services Oversight Council and clarifies that prudential standards promulgated under the Financial Stability Improvement Act of 2009 do not supersede state or federal consumer protection standards. (2) Would add a representative of the State securities commissioners (or other office performing like functions) as a non-voting representative on the Financial Services Oversight Council. (3) Would improve various oversight provisions in the bill, including adding GAO authority to conduct oversight of the CFPA, among

other improvements. (4) Would clarify that the systemic risk regulator created and empowered under the Act is the Financial Services Oversight Council, rather than the Board of Governors of the Federal Reserve System. Emergency voting provisions remain unchanged, the Board retains its equal vote as a Member of the Council, and may act at the direction of the Council. (5) Would clarify that financial companies cannot be compelled by the systemic risk regulator to waive any privilege (such as attorney-client privilege) when providing data at the request of the systemic risk regulator. The bill currently provides only that in responding to the request the company shall not be deemed to have waived any such privilege. (6) Would clarify 1105 of H.R. 4173 such that the limited scope of the judicial review provision in 1105(h) is unambiguous. It would limit judicial review to the new regulatory powers defined by 1105, which establishes new regulatory prerogatives through mitigation of systemic risk. (7) Would clarify the conditions under which contingent capital will be triggered. (8) Would require HAMP-participating servicers to disclose "net present value" (NPV) analysis mortgage-related or homeowner-related inputs to the homeowner upon denial of loan modification, requires the Department of the Treasury to create a homeowner-accessible website with a calculator for NPV analysis of a mortgage, and requires the Department of the Treasury to make public its methodology and model used for calculating NPV. (9) Would modify changes of control in applicable financial institutions. (10) Would extend the ability of the Federal Reserve to prevent the merger, acquisition, or consolidation of a non-bank financial holding company under the Bank Holding Company Act. (11) Would eliminate the current disparity between banks and thrifts by allowing for nationwide de novo interstate branching for all federally insured depository institutions. (12) Would create a mutual commercial bank charter. (13) Would reduce the size of the haircut that FDIC may impose on secured creditors of a firm placed into receivership that results in losses to the taxpayer or the Fund to 10 percent. It further focuses the haircut to secured loans with a term of 30 days or less, and exempts from the haircut loans secured by Treasury bonds, agency or GSE backed debt, as well as debt derived from real property. The amendment clarifies no haircut may be imposed unless all shareholders and other junior creditors are wiped out. The revised amendment makes additional technical changes, all of which are consistent with the policy aim of the original amendment, as stated above. (14) Would direct the Department of the Treasury to conduct a study to analyze how the resolution authority granted in the bill is funded. (15) Would require the CFPA Director to establish a website for consumer complaints in conjunction with a complaint monitoring system and toll-free number. (16) Would establish the Office of Financial Protection for Older Adults to strengthen the protection of seniors against financial exploitation. Facilitates the education of seniors on protecting themselves from fraud and abuse, monitors the designations within the senior financial advisor community to alert regulators of misleading certifications, and improves coordination between current elder protection agencies. (17) Would clarify that the CFPA can charge higher assessments for banks that have poor consumer protection records or pose excessive risk to consumers. (18) Would use funds from the CFPA Vic-

tims Relief Fund to pay for financial literacy programs administered by the Treasury Department's Financial Education and Counseling Grant Program. (19) Would establish an office within the Consumer Financial Protection Agency (CFPA) to advise the director on the impact of agency policies and regulations on small, community financial institutions and help ensure that the policies and regulations of the CFPA do not unduly burden community financial institutions. (20) Would clarify the rulemaking supervisory and enforcement authority of the CFPA. (21) Would limit the CFPA's authority regarding charitable contributions through tax-exempt organizations recognized by the IRS. (22) Would consider as "unfair" for a credit bureau to make available for purchase by lenders any type of credit score for a consumer that is not also available for purchase by that same consumer. (23) Would define person-to-person lending platforms for purposes of an exception to the securities law, make the Consumer Financial Protection Agency the primary regulator of person to person lending, and specify that until the CFPA has adopted disclosure requirements person to person lending platforms would be required to continue to provide disclosures under the Securities Acts of 1933 and 1934. (24) Would require that the Director of the CFPA: (1) conduct a review of Federal laws and regulations relating to the protection of individuals that utilize exchange facilitators (2) submit to Congress recommendations on the steps necessary to ensure appropriate protection of such persons and (3) establish and carry out a program, utilizing the authority of the CFPA, to protect individuals that utilize exchange facilitators. (25) Would direct the CFPA to promulgate a rule, within 180 days, requiring banks to prominently place at their branch locations information regarding the fees and charges associated with the bank's overdraft protection program. (26) Would retain the existing Consumer Advisory Council at the Federal Reserve and would add additional statutory requirements to the Council that it make an annual set of recommendations to the Consumer Financial Protection Agency, that it make these recommendations public, and that it meet with the CFPA Director annually to discuss them. Would require the Consumer Advisory Council to meet with the Fed Board of Governors annually and the Chair of the Fed to include the Council's recommendations for consumer protection regulations for the CFPA in his mandated appearances before Congress. (27) Would require private educational lenders to obtain institutional certification prior to making a loan to students. It would require the Consumer Financial Protection Agency and the Department of Education to conduct a study on private education loans and lenders and report to Congress on the compliance of institutions and private educational lenders with these provisions. (28) Would clarify that private funds, investment advisors and others cannot be compelled by the systemic risk regulator to waive and shall not be deemed to have waived any privilege (such as attorney client privilege), by adding to Title V the same language to that effect that was included in Title 1. (29) Would mandate the registration of all credit rating agencies as "Nationally Recognized Statistical Rating Organization." (30) Would lower the liability standard for credit rating agencies from "knowingly or recklessly" to "gross negligence". (31) Would provide that a purchaser of a security given a rating by a nationally recognized statistical rating organization

shall have the right to recover for damages only if the credit rating was grossly negligent based on the facts and circumstances available at the time the rating was issued and was a substantial factor in the investor's economic loss. (32) Would strike Section 7419 of the bill concerning custodial requirements for investment advisers. (33) Would require the Comptroller General to include in the study the feasibility of providing an optional additional level of insurance for Securities Investor Protection Corporation protection. (34) Would double the funding for the Senior Investment Protection grant program established in the bill, and increase the maximum amount for grants under the program. (35) Would include geographic disparities in access and cost of insurance products in a study on modernization and improvement of insurance regulation in the United States. (36) Would amend Section 104(a) of the Helping Families Save Their Homes Act (PL 111–22) to require the Comptroller of Currency, in coordination with the Director of Thrift Supervision, to issue its mortgage metrics data by state. (38) Would serve as a substitute for Section 1109 of the bill. Would cap the FDIC's guarantee authority at $500 billion under a debt guarantee program, limit the financial institutions that may participate, empower the FDIC to push a defaulting borrower into bankruptcy or receivership (whichever is applicable), repeal the FDIC's existing systemic risk authority but restore it if the new authority sunsets, reorder in bankruptcy the FDIC's claim on the assets of a borrower that has issued debt guaranteed under this section, authorize the FDIC to demand the pledge of collateral in return for any guarantee, ensure that the guarantee fees collected on a guarantee program shall be actuarially sufficient to cover losses, clarify that any back-up special assessment to cover losses on the program would be imposed solely on participants in the program, permit the FDIC to require warrants for assistance provided under this section or Section 1604 (Resolution Authority) and limit the application of executive compensation rules under Resolution Authority to times when the FDIC has borrowed from the Treasury under Section 1609(o). (39) Would amend Section 1255, Requirement for Countercyclical Capital Requirement, by striking "may decrease" and inserting "decreases" on page 204, line 14. (40) Would enhance the ability of nonbank institutions to comply with the regulatory efforts of the Consumer Financial Products Agency, bring needed fairness to the regulatory processes desired by Congress, and better focus regulatory efforts on nonbank products and practices. (41) Would provide an exemption for any retailers and other non-financial firms subject to the Consumer Financial Protection Agency Act. (42) Would make a number of technical clarifications to the amendments to the Federal Trade Commission's rulemaking procedure for unfair or deceptive acts or practices, to more closely conform with the Administrative Procedure Act. (43) Would clarify that any losses on loan guarantees for solvent institutions are paid solely by loan guarantee program participants. (44) Would add the head of the CFPA to the Financial Services Oversight Council and clarifies that prudential standards promulgated under the Financial Stability Improvement Act of 2009 do not supersede state or federal consumer protection standards. (45) Would clarify the authority of the Public Company Accounting Oversight Board to inspect the auditors of broker dealers and requires rule making thereon. (46)

Would apply the current 10% deposit cap on interstate acquisitions to thrift acquisitions. (47) Would make technical changes to clarify that the Federal Trade Commission (FTC) retains enforcement authority with regard to the enumerated statutes transferred to the new Consumer Financial Protection Agency (CFPA), to provide for CFPA consultation with FTC in certain areas in which FTC has expertise, and to clarify other provisions. (48) Would establish a definitive deadline for concluding disapproval proceedings. Whereas the current standard is that disapproval proceedings must be concluded within 180 days after publication of the notice of a proposed rule change in the Federal Register, the proposed revisions would instead specify 200 days after a proper filing. Accordingly, the SEC would not be able to hold a filing from publication indefinitely to avoid triggering disapproval proceedings. (49) Would clarify that the extension of credit and collection of debt as defined in the merchants' exclusion of Title V is not a financial product or service. (50) Would clarify the definition of financial data processing in Title V, and establishes that a person is not engaged in "financial activity" if they are providing "interactive computer service" as defined by the Communications Act of 1934. (51) Would clarify that federal financial regulatory agencies have broad authority to impose and enforce stricter standards with respect to firms they regulate to mitigate systemic risk. (30 minutes)

2. Sessions (TX): Would strike provisions which create a new private right of action against credit rating agencies; the amendment contains enforcement of credit rating agencies to the SEC (current practice). (10 minutes)

3. Peterson (MN), Frank (MA): The amendment provides for position limits for physical commodities, clearing of over-the-counter transactions, increased transparency, reporting, and recordkeeping, and transparency of offshore trading. It also addresses jurisdictional issues in the context of swaps by providing for CFTC jurisdiction over swaps and SEC jurisdiction over swaps that are primarily based on securities (or narrow based security indexes). These two agencies are required to consult with each other and with banking regulators before regulating. The amendment further requires a swap to be cleared if a clearing agency or organization will accept the swap for clearing, and the CFTC or SEC has determined that clearing is mandatory for such swap. Clearing is not required if one of the counterparties is not a swap dealer or major swap participant and can demonstrate business or risk management practices for non-cleared swaps. Swaps that must be cleared must also be traded on exchange or on a swap execution facility or "SEF", unless there is no exchange or SEF that will list the swap. A SEF is a facility for execution or trading of swaps such as an electronic trade execution facility. Voice brokers are still permitted to enter and execute swaps subject to the clearing requirement, so long as they process the swap though a regulated exchange or SEF. Uncleared swaps must be reported to a swap repository or to the regulator. The amendment requires swap dealers and major participants to maintain capital appropriate to the risk associated with the non-cleared swaps being held as a dealer or major participant. Dealers and major participants must also meet margin requirements to help ensure their own safety and soundness, and which are appropriate for the risk associated with the non-cleared swaps

they hold as a dealer or major participant. Dealers must also segregate funds or property associated with an uncleared swap at their counterparties' request.

The amendment requires the CFTC to establish position limits on swaps that perform a significant price discovery function and require aggregate limits across markets. It further requires the CFTC to establish position limits on futures transactions for physically deliverable commodities that are applicable to spot month, each month, and all months aggregated, and to hold hearings on such position limits. The CFTC is also authorized to provide exemptions to position limits. The amendment also requires Foreign Boards of Trade to meet certain standards of comparability to the requirements applicable to U.S. boards of trade and provides legal certainty for certain contracts traded on or through a foreign board of trade. The amendment also clarifies CFTC jurisdiction with respect to certain retail commodity transactions. (30 minutes)

4. Peterson (MN): Would provide that the CFTC would define the terms "Commercial Risk", "operating risk", and "balance sheet risk" for purposes of the Commodity Exchange Act (10 minutes)

5. Lynch (MA): Would provide rules toward the equitable governance of clearing houses and swap exchange facilities. (10 minutes)

6. Murphy, Scott (NY), McMahon (NY), Kratovil (MD): Would replace the current definition of Major Swap Participant with the definition that was reported out of the House Agriculture Committee. (10 minutes)

7. Frank (MA): Would create authority for the prudential regulators, the CFTC and the SEC, to set margin in swap and security-based swap transactions involving end users. (10 minutes)

8. Stupak (MI), Van Hollen, Chris (MD): Would require transparency in swaps contracts by requiring all non-cleared swaps be executed on a registered swap execution facility. (10 minutes)

9. Stupak (MI), DeLauro (CT), Larson, John (CT), Van Hollen, Chris (MD): Would allow the Commodity Futures Trading Commission and the Securities and Exchange Commission the authority to ban abusive swaps, amends any proposed commercial risk definition to disregard balance sheet risk, and maintains any illegal swap entered into after enactment of this Act will not be valid. (10 minutes)

10. Matsui (CA), Sutton (OH), Castor (FL): Would require any mortgage servicer or lender participating in the Making Home Affordable Program, to report to the Department of Treasury on a monthly basis. The Department shall make such a report available on their website within two weeks of receiving such information for public viewing. The report to Treasury shall include, but not limited to the following, with respect to the Making Home Affordable Plan: (A) the number of loan modification requests received; (B) number of loan modification requests being processed; (C) the number of loan modification requests that have been approved; (D) the number of loan modification requests that have been denied. The amendment gives the Secretary of Treasury authority to publicly release any other relevant data the Secretary deems necessary. (10 minutes)

11. Paulsen (MN): Would clarify that the non-voting members of the systemic risk council shall not be excluded from participating

in any of the Council's proceedings, meetings, discussions, and deliberations. (10 minutes)

12. Kanjorski (PA), Frank (MA), Sarbanes (MD), Cohen (TN): Would strike the provisions exempting public companies with less than $75 million in market capitalization from the requirements of the Sarbanes-Oxley Act related to the external audit of internal controls. (10 minutes)

13. Marshall (GA): Would provide that no private right of action may brought forward based on any provision of the Consumer Financial Protection Agency title. (10 minutes)

14. McCarthy, Kevin (CA): Would strike section 6012 (relating to "Effect of Rule 436(G)"). The amendment would strike increased liability language that would be a barrier to entry, inhibiting increased competition in the rating agency market. (10 minutes)

15. Cohen (TN), Frank (MA): Would strike language that would permit FINRA to regulate investment advisers that are associated with broker dealers. (10 minutes)

16. Peters (MI): Would authorize the FDIC to make assessments for the Systemic Dissolution Fund used to repay any shortfalls in Troubled Asset Relief Program (TARP) to ensure that such shortfalls do not add to the deficit or national debt. (10 minutes)

17. Watt (NC): Would revise the exclusion for auto dealers under the Consumer Financial Protection Agency Act by clarifying what auto dealer activities are excepted. (10 minutes)

18. Frank (MA), Kanjorski (PA): Would aim to stem the unintended consequences resulting from the definitional change of NRSRO from "Nationally Recognized Statistical Rating Organization to "Nationally Registered Statistical Rating Organization." Section 6005 creates inconsistencies in the securities laws as it amends the definition only in the 1933 and 1934 Acts and it has potential impact on state rules and regulations requiring a change of state level statute. (10 minutes)

19. Conyers (MI), Turner (OH), Lofgren (CA), Marshall (GA), Waters (CA), Cohen (TN), Miller, Brad (NC), Delahunt (MA), Nadler (NY), Fudge (OH): Would allow bankruptcy courts to extend repayment periods, reduce excessive interest rates and fees, and adjust the principal balance of the mortgage to a home's fair market value as necessary to prevent foreclosure and revised to allow the VA, FHA, and RHS to take steps to facilitate mortgage modifications. The amendment is substantively identical to title I, subtitle A and sections 121–123 of subtitle B of H.R. 1106 (Helping Families Save Their Homes Act of 2009), which passed the House on March 5, 2009. (10 minutes)

20. Burgess (TX): Would strike the word "orderliness" from the list of items the Financial Services Oversight Council must advise Congress on how to improve financial regulatory developments. (10 minutes)

21. Burgess (TX): Would index to inflation any mitigatory action imposed by the Financial Services Oversight Council involving the sale, divestiture or transfer of more than $10 billion in total assets by a financial holding company subject to stricter standards. (10 minutes)

22. Burgess (TX): Would require the Federal Reserve to define by rule or regulation the term 'significantly undercapitalized' at a threshold the Fed determines to be prudent for the effective moni-

toring, management and oversight of the financial system. (10 minutes)

23. Burgess (TX): Would set an outer time limit of two years to the amount of time the GAO can use to audit the Federal Reserve. (10 minutes)

24. Burgess (TX): Would remove from the GAO study of the SEC's "revolving door" the requirement to determine if employees of the SEC who are later employed by financial institutions "have engaged in information sharing". (10 minutes)

25. Herseth Sandlin (SD): Would direct the SEC to take into account the relative risk profile of different classes of funds when it is developing the new registration regime for private funds. (10 minutes)

26. Garrett (NJ): Would allow rating agency firms to deregister as Nationally Recognized Statistical Rating Organizations (NRSRO), provided such NRSRO certifies that it received less than $250 million during its last full fiscal year in compensation for providing credit ratings on securities and money market instruments issued in the U.S. (10 minutes)

27. Dent (PA): Would state a sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information. (10 minutes)

28. Moore, Dennis (KS), Garrett (NJ): Would specify only the tax policies, licensing and other regulatory requirements of the home state of the policyholder govern a surplus lines transaction, as well as allows sophisticated commercial entities direct access to the surplus lines market. The amendment also prohibits states from voiding established, contractual arbitration agreements between reinsurers and primary companies. (10 minutes)

29. Wittman (VA): Would amend various banking laws to clarify the applicability of exceptions to allow banks to announce, advertise, publicize, and/or deal in any lottery that benefits nonprofit tax-exempt organizations. (10 minutes)

30. Minnick (ID): Would define unfair, deceptive, or abusive acts or practices that would be determined by the CFPA. (10 minutes)

31. Bartlett (MD): Would provide for State loan originator supervisory authority to review and grant exceptions on a case by case basis to the mortgage originators lifetime ban. (10 minutes)

32. Schakowsky (IL), Titus (NV): Would provide the Director of the Consumer Financial Protection Agency with authority to issue regulations for reverse mortgage transactions within one year of enactment. It would clarify the Director's authority to consider additional consumer protections under both consumer protection statutes and HUD regulations. (10 minutes)

33. Kilroy (OH): Would make explicit that financing for the Systemic Dissolution Fund would come exclusively from assessments on industry, without recourse to the American taxpayer. (10 minutes)

34. Murphy, Scott (NY): Would repeal a prohibition on the payment of interest on business checking accounts. (10 minutes)

35. Minnick (ID), Schock (IL), Shuler (NC), Castle (DE), Childers (MS), Campbell (CA), Markey, Betsy (CO), Reichert (WA), Teague (NM), Bright (AL), Boren (OK), Griffith (AL): Would create a Con-

sumer Financial Protection Council (CFPC) of regulators with rule-writing authority in safety and soundness of institutions and consumer protections regarding all financial products. The CFPC is comprised of 12 members including the Secretary of Treasury, Secretary of Housing and Urban Development, the Chairman of the Federal Reserve, the chairman of the CFTC and SEC, among other federal and state regulators. (20 minutes)

36. Bachus (AL), Biggert (IL), Capito (WV), Hensarling (TX), Garrett (NJ), Neugebauer (TX): Would provide an alternative bill that establishes a new chapter of the bankruptcy code to resolve certain non-bank financial institutions; creates a consumer protection council comprised of existing Federal regulators to revise and promulgate model regulations to enhance consumer protection and improve disclosure; strengthens anti-fraud provisions; regulates over-the-counter derivatives markets; addresses executive compensation; removes statutory reliance on credit ratings; reforms the Government Sponsored Enterprises (Fannie Mae and Freddie Mac); and creates a Federal Insurance Office. (30 minutes)

TEXT OF THE AMENDMENTS TO BE MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK, BARNEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Page 1, line 4, strike “The” before “Wall Street”.

Page 13, line 6, insert “(hereafter in this title referred to as a ‘foreign financial parent’) after” after “United States”.

Page 13, beginning on line 14, strike “of a company” and all that follows through “United States” on line 16.

Page 15, after line 11, insert the following new clause (and redesignate subsequent clauses appropriately):

(iv) after the date on which the functions of the Office of Thrift Supervision are transferred under subtitle C, any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners’ Loan Act) and any subsidiary (as such term is defined in the Bank Holding Company Act of 1956) of such company, other than a subsidiary that is described in any other subparagraph of this paragraph, to the extent that the subsidiary is engaged in an activity described in such subparagraph;

Page 15, line 25, strike “a” and insert “any”.

Page 17, after line 6, insert the following new clause (and redesignate subsequent clauses appropriately):

(v) a securities-based swap execution facility that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);”

Page 21, line 11, strike “to pursuant” and insert “pursuant”.

Page 21, after line 21, insert the following new subparagraph:

(J) The head of the Consumer Financial Protection Agency.

Page 21, after line 23, insert the following (and redesignate succeeding paragraphs accordingly):

(A) The Director of the Federal Insurance Office.

Page 23, line 4, strike “plans” and insert “strategies”.

Page 23, line 5, strike “plans” and insert “strategies”.

Page 23, line 6, insert after the period the following new sentence: “In doing so, the Council shall collaborate with participants in the financial sector, financial sector coordinating councils, and any other parties the Council determines to be appropriate.”.

Page 24, beginning on line 23, strike “another dispute mechanism specifically has been provided under Federal law” and insert “a dispute mechanism specifically has been provided under section 4204 or title III”.

Page 28, line 24, strike “plans” and insert “strategies”.

Page 29, line 2, strike “plans” and insert “strategies”.

Page 32, strike line 22 and all that follows through page 33, line 7.

Page 34, after line 22, insert the following new paragraph:

(3) MITIGATION REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.—Before requiring the submission of reports from a company that is a foreign financial parent, the Council or the Board shall, to the extent appropriate, coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization and, whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational with English translation.

Page 35, line 1, insert after “entities” the following: “(including the Federal Insurance Office)”.

Page 37, line 12, insert “; agency authority” before the period.

Page 37, strike lines 17 and 18, and insert the following:

(b) AGENCY AUTHORITY TO IMPLEMENT STANDARDS.—

(1) IN GENERAL.—A Federal financial regulatory agency specifically

Page 37, line 19, strike “is authorized to” and insert “may, in response to a Council recommendation under this section or otherwise,”.

Page 38, after line 4, insert the following new paragraph:

(2) APPLYING STANDARDS TO FOREIGN FINANCIAL PARENTS.—In applying standards under paragraph (1) to any foreign financial parent, or to any branch of, subsidiary of, or other operating entity related to such foreign financial parent that operates within the United States, the Federal financial regulatory agency shall—

(A) give due regard to the principles of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial parent is subject to comparable standards on a consolidated basis in the home country of such foreign financial parent that are administered by a comparable foreign supervisory authority.

Page 38, line 22, after “such company,” insert the following: “and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office,”.

Page 39, strike line 11 and all that follows through line 15 (and redesignate subsequent paragraphs accordingly).

Page 39, after line 25, insert the following new paragraphs (and redesignate subsequent paragraphs accordingly):

(5) The company's importance as a source of credit for low-income, minority, or underserved communities and the impact the failure of such company would have on the availability of credit in such communities.

(6) The extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse.

Page 40, line 5, insert before the period the following: "or, in the case of a foreign financial parent, the extent to which such foreign parent is subject to prudential standards on a consolidated basis in the home country of such financial parent that are administered and enforced by a comparable foreign supervisory authority".

Page 40, after line 5, insert the following new paragraphs (and redesignate the subsequent paragraph accordingly):

(8) The amount and nature of the company's financial assets.

(9) The amount and nature of the company's liabilities, including the degree of reliance on short-term funding.

Page 41, strike line 10 and all that follows through line 19 (and redesignate subsequent subsections accordingly).

Page 42, strike line 9 and all that follows through page 44, line 10, and insert the following new paragraphs:

(1) APPLICATION OF FEDERAL LAWS.—

(A) APPLICATION OF BANK HOLDING COMPANY ACT AND FEDERAL DEPOSIT INSURANCE ACT.—A financial company subject to stricter standards that does not own a bank (as defined in section 2 of the Bank Holding Company Act of 1956) and that is not a foreign bank or company that is treated as a bank holding company under section 8 of the International Banking Act of 1978 shall be subject to section 4, subsections (b), (c), (d), (e), (f), and (g) of section 5, and section 8 of the Bank Holding Company Act of 1956, and section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(B) BOARD AUTHORITY.—For purposes of administering and enforcing the provisions of this title, the Board may take any action with respect to a financial holding company subject to stricter standards described in subparagraph (A) or its subsidiaries under the authorities described in subparagraph (A) as if such financial holding company subject to stricter standards were a bank holding company that has elected to be a financial holding company (as such terms are defined in the Bank Holding Company Act of 1956), its subsidiaries were subsidiaries of a bank holding company, and the Board was its appropriate Federal banking agency (as such term is defined under the Federal Deposit Insurance Act).

(2) APPLICATION OF ACTIVITY RESTRICTIONS AND SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) a financial holding company subject to stricter standards that conducts activities that do not comply with section 4 of the Bank Holding Company Act shall be required to establish or designate a section 6 holding company in accordance with section 6 of the Bank Holding Company Act of 1956 through which it conducts activities of the company that are determined to be financial in nature or incidental thereto under section 4(k) of the such Act; and

(ii) such section 6 holding company shall be the financial holding company subject to stricter standards for purposes of this title.

(B) EXCEPTIONS FROM SECTION 6 HOLDING COMPANY REQUIREMENTS.—

(i) GENERAL REQUIREMENT FOR BOARD TO CONSIDER EXCEPTIONS.—Before such time as a financial holding company subject to stricter standards is required to establish or designate a section 6 holding company under section 6 of the Bank Holding Company Act, and in consultation with the financial holding company subject to stricter standards and any appropriate Federal or State financial regulators (and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office)—

(I) the Board shall consider whether to grant any of the exemptions from the requirements applicable to section 6 holding companies under section 6(a)(6)(A) of the Bank Holding Company Act of 1956, in accordance with that provision; and

(II) the Board, at the request of a financial holding company subject to stricter standards that is predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act, shall consider whether to exempt the financial holding company subject to stricter standards from the requirement to establish a section 6 holding company, taking into consideration paragraph (2)(D), and the extent to which the exemption would: facilitate the extension of credit to individuals, households and businesses; improve efficiency or customer service or result in other public benefits; potentially threaten the safety and soundness of the financial holding company or any of its subsidiaries; potentially increase systemic risk or threaten the stability of the overall financial system; potentially result in unfair competition; and potentially have anticompetitive effects that would not be outweighed by public benefits.

(ii) BOARD DETERMINATION NOT TO EXEMPT.—

(I) IN GENERAL.—If the Board determines not to exempt the financial holding company subject to

stricter standards from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall establish a section 6 holding company within 90 days after the Board's determination.

(II) EXTENSION OF PERIOD.—The Board may extend the time by which the financial holding company subject to stricter standards is required to establish a section 6 holding company for an additional reasonable period of time, not to exceed 180 days.

(iii) BOARD DETERMINATION TO EXEMPT.—

(I) IN GENERAL.—If the Board grants the requested exemption from the requirement to establish a section 6 holding company, the financial holding company subject to stricter standards shall at all times remain predominantly engaged in activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, and shall be the financial holding company subject to stricter standards for purposes of this title.

(II) SUBSEQUENT LOSS OF EXEMPTION.—Upon a determination by the Board, in consultation with any relevant Federal or State regulators of the financial holding company subject to stricter standards, and, in the case of a financial holding company subject to stricter standards that is an insurance company, the Federal Insurance Office, that the financial holding company subject to stricter standards fails to comply with this subsection, the financial holding company subject to stricter standards shall lose the exemption from the section 6 holding company requirement and shall establish a section 6 holding company within the time periods described in clause (ii)(I).

(C) ACTIVITIES CONDUCTED ABROAD.—Section 4 of the Bank Holding Company Act of 1956 shall not apply to any activities that a foreign financial holding company subject to stricter standards conducts solely outside the United States if such activities are conducted solely by a company or other entity that is located outside the United States.

(D) FLEXIBLE APPLICATION.—In applying the activity restrictions and ownership limitations of section 4 of the Bank Holding Company Act of 1956 to financial holding companies subject to stricter standards described in paragraph (1)(A), the Board shall flexibly adapt such requirements taking into account the usual and customary practices in the business sector of the financial company subject to stricter standards so as to avoid unnecessary burden and expense.

Page 45, line 5, insert ", as agent of the Council," after "Board".

Page 45, beginning on line 18, strike "heightened" and insert "stricter".

Page 45, strike lines 21 and 22 and insert the following new clause (and redesignate subsequent clauses accordingly):

(i) risk-based capital requirements and leverage limits, unless the Board determines that such requirements are not appropriate for a financial holding company subject to stricter standards because of such company's activities (such as investment company activities or assets under management) or structure, in which case the Board shall apply other standards that result in appropriately stringent controls.

Page 46, line 4, insert "and" after the semicolon.

Page 46, line 6, strike "; and" and insert a period.

Page 46, strike line 7 and all that follows through line 9.

Page 46, line 12, insert "short-term debt limits prescribed in accordance with subsection (d) and" after "include".

Page 46, line 17, after "AGENCIES" insert the following: "AND THE FEDERAL INSURANCE OFFICE".

Page 47, line 2, after the period insert the following: "With respect to a financial holding company subject to stricter standards that is an insurance company or any insurance company subsidiary of such a financial holding company subject to stricter standards, the Board shall also consult with the Federal Insurance Office.".

Page 47, strike line 3 and all that follows through line 5 and insert the following:

(3) APPLICATION OF REQUIRED STANDARDS.—In imposing prudential standards under this section, the Board—

(A) may differentiate among financial

Page 47, line 11, strike the period and insert "; and".

Page 47, after line 11, insert the following new subparagraph:

(B) shall take into consideration whether and to what extent a financial holding company subject to stricter standards that is not a bank holding company or treated as a bank holding company owns or controls a depository institution and shall adapt the prudential standards applied to such company as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which capital requirements are not appropriate.

Page 47, beginning on line 20, strike "financial companies" and all that follows through "own or control" on line 22, and insert "a foreign financial parent and to".

Page 47, beginning on line 23, strike "that is a" and all that follows through "principle" on line 25 and insert "that is owned or controlled by a foreign financial parent, giving due regard to principles".

Page 48, beginning on line 2, strike "such companies are subject" and insert "the foreign financial parent is subject on a consolidated basis".

Page 50, line 22, strike ", as such entities are" and insert "as".

Page 51, line 13, before the period insert the following: "and, with respect to an insurance company, the Federal Insurance Office".

Page 54, line 14, insert before the period the following: "except as specifically provided in this title".

Page 54, line 19, insert before the period the following: “except as specifically provided in this title”.

Page 55, line 14, strike “shall” and insert “may.”

Page 55, line 19, strike “The” and insert “Any”.

Page 56, strike line 20 and all that follows through line 25.

Page 68, line 17, insert “The Board, in determining whether to impose any requirement under this subparagraph that is likely to have a significant effect on a functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary of a financial holding company subject to stricter standards, shall consult with the primary financial regulatory agency for such subsidiary. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office.” after the period.

Page 76, line 9, insert “, after consultation with the primary financial regulatory agency for any functionally regulated subsidiary, subsidiary depository institution, or insurance company subsidiary that is likely to be significantly affected by such actions. In the case of an insurance company subsidiary of a financial holding company subject to stricter standards, the Board shall consult with the Federal Insurance Office” before the period.

Page 86, line 1, after “standards” insert the following: “(and, if the financial holding company subject to stricter standards is an insurance company, the Federal Insurance Office)”.

Page 87, after line 5, insert the following new subsections:

(j) RULE OF CONSTRUCTION REGARDING CONSUMER PROTECTION STANDARDS.—The prudential standards imposed or recommended by the Board or the Council under this section shall not be construed as superseding—

(1) any consumer protection standards promulgated under a State or Federal consumer protection law, including the Consumer Financial Protection Agency Act and the Federal Trade Commission Act; or

(2) any investor protection standard that protects consumers (including public reporting requirements) imposed under State or Federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1944, and the Investment Advisors Act of 1944.

(k) RULEMAKING AUTHORITY.—The Board may prescribe such regulations and issue such orders as the Board, in consultation with the Council, determines to be necessary to carry out the provisions of this subtitle.

Page 87, line 24, strike “financial company subjected to stricter prudential” and insert “financial holding company subject to stricter”.

Page 88, line 2, insert after the period the following: “With respect to any requirements under this section that is likely to have a significant effect on an insurance company, the Council shall consult with the Federal Insurance Office.”.

Page 89, line 8, insert “stricter” after “modifying the”.

Page 90, line 14, insert “holding” after “financial”.

Page 90, line 15, strike “prudential”.

Page 90 line 16, strike “financial company” and insert “financial holding company subject to stricter standards”.

Page 90, line 22, strike “company subject to stricter prudential” and insert “holding company subject to stricter”.

Page 92, line 20, strike “subsection (e)(5)” and insert “this section”.

Page 93, line 1, strike “(e)(5)” and insert “(e)(2)”.

Page 96, line 18, insert “, as agent of the Council,” after “Board”.

Page 97, line 4, insert after the period the following: “With respect to any standard that is likely to have a significant effect on insurance companies, the Board also shall consult with the Federal Insurance Office.”.

Page 97, after line 16, insert the following new paragraph:

(3) EXCEPTION.—The standards recommended by the Board and adopted by a primary financial regulatory agency pursuant to this section shall not apply to activities that a foreign financial parent conducts solely outside the United States if such activities are conducted solely by a company or other operating entity that is located outside the United States.

Page 119, line 7, insert “, after notice and opportunity for comment,” after “may”.

Page 119, line 13, strike “agency” and insert “Board”.

Page 119, line 14, strike “agency” and insert “Board”.

Page 122, line 18, strike “The authorities” and insert the following:

(a) CONSTRUCTION.—The authorities

Page 123, after line 2, insert the following new subsection:

(b) AGENT RESPONSIBILITIES.—For purposes of this subtitle, the term “agent” means the Board acting under section 1103(c) and coordinating with the Council in exercising authority under sections 1104 and 1107.

Page 129, line 17, insert “, and who shall coordinate with the Office of Thrift Supervision pursuant to section 1211” before the period at the end.

Page 131, after line 5, insert the following new subsection:

(f) EFFECTIVE DATE.—Subsection (b) shall take effect on the date of the enactment of this Act .

Page 132, after line 15, insert the following new paragraph:

(4) FUNCTIONS RELATING TO SUPERVISION OF SAVINGS AND LOAN HOLDING COMPANIES.—

(A) TRANSFER OF FUNCTIONS.—All functions of the Director of the Office of Thrift Supervision relating to the supervision and regulation of Savings and Loan Holding Companies are transferred to the Board.

(B) BOARD AUTHORITY.—The Board shall succeed to all powers, authorities, rights, and duties that were vested in the Director of the Office of Thrift Supervision under Federal law, including the Home Owners’ Loan Act, on the day before the transfer date, relating to the supervision and regulation of Savings and Loan Holding Companies.

Page 132, after line 24, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(2) in paragraph (2)(E), by striking “and” at the end;

Page 133, after line 2, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) after paragraph (2)(F), by inserting the following new subparagraph:

"(G) any savings and loan holding company and any subsidiary of a savings and loan holding company (other than a savings association); and";

Page 147, line 21, insert "and" after the semicolon.

Page 147, line 25, strike "; and" and insert a period.

Page 148, strike line 1 and all that follows through line 3.

Page 162, after line 6, insert the following new paragraphs (and redesignate succeeding paragraphs accordingly):

(1) In subsection (a)—

(A) in paragraph (1)(A), by striking "Director" and inserting "Board";

(B) in paragraph (1)(D), by striking clause (i) and inserting: "(i) In general.—.

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'savings and loan holding company' means any company that directly or indirectly controls a savings association or that controls any company that is a savings and loan holding company, and that is either—

"(I) a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986; or

"(II) a company that is, together with all of its affiliates on a consolidated basis, predominantly engaged in the business of insurance.";

(C) in paragraph (1)(F), by striking "Director" and inserting "Board";

(D) in paragraph (1), by inserting at the end the following new subparagraph:

"(K) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.".

(E) in paragraph (2)(D), by striking "Director" and inserting "Board";

(F) in paragraph (3)(A), by striking "Director" and inserting "Board"; and

(G) in paragraph (4), by striking "Director" and inserting "Board".

(2) In subsection (b), by striking "Director" each place it appears and inserting "Board".

(3) In subsection (c)—

(A) in paragraph, (2)(F)(i)—

(i) by striking "of Governors of the Federal Reserve System"; and

(ii) by striking "Director" and inserting "Board";

(B) in paragraph (2)(G), by striking "Director" and inserting "Board";

(C) in paragraph (4)(A), by striking "Director" and inserting "Board";

(D) in paragraph (4)(B)—

(i) in the heading, by striking "director" and inserting "Board"; and

(ii) by striking "the Director shall" and inserting "the Board shall";

(E) in paragraph (4)(C)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “the Director may” and inserting “the Board may”;

(F) in paragraph (5), by striking “Director” and inserting “Board”;

(G) in paragraph (6)(D)—

(i) in the heading, by striking “director” and inserting “Board”; and

(ii) by striking “Director” each place it appears and inserting “Board”;

(H) in paragraph (9)(A)(ii), by inserting “, but only if the conditions for engaging in expanded financial activities set forth in section 4(l) of the Bank Holding Company Act of 1956 have been met” after “1956”; and

(I) in paragraph (9)(E), by striking “Director” each place it appears and inserting “Board”.

(4) In subsection (e)—

(A) in paragraph (1)(A)—

(i) in clause (i), by striking “Director” and inserting “Board”;

(ii) in clause (ii), by striking “Director” and inserting “Board”;

(iii) in clause (iii), by striking “Director” each place it appears and inserting “Board”; and

(iv) in clause (iv), by striking “Director” each place it appears and inserting “Board”;

(B) in paragraph (1)(B), by striking “Director” each place it appears and inserting “Board”;

(C) in paragraph (2), by striking “Director” each place it appears and inserting “Board”;

(D) in paragraph (3), by striking “Director” and inserting “Board”;

(E) in paragraph (4)(A), by striking “Director” and inserting “Board”; and

(F) in paragraph (5), by striking “Director” each place it appears and inserting “Board”.

(5) In subsection (f), by striking “Director” each place it appears and inserting “Board”.

(6) In subsection (g), by striking “Director” each place it appears and inserting “Board”.

(7) In subsection (h)—

(A) in paragraph (2), by striking “Director” and inserting “Board”; and

(B) in paragraph (3), by striking “Director” and inserting “Board”.

(8) In subsection (i)—

(A) in paragraph (1)(A), by striking “Director” and inserting “Board”;

(B) in paragraph (2)(B), by striking “Director” and inserting “Board”;

(C) in paragraph (2)(F), by striking “Director” and inserting “Board”;

(D) in paragraph (3)(B), by striking “Director” and inserting “Board”;

(E) in paragraph (3)(F), by striking "Director" and inserting "Board";

(F) in paragraph (4), by striking "Director" and inserting "Board"; and

(G) in paragraph (5), by striking "Director" and inserting "Board".

(9) In subsection (j), by striking "Director" each place it appears and inserting "Board".

(10) In subsection (l)—

(A) in paragraph (1), by striking "Director" and inserting "Board, in consultation with the Comptroller of the Currency,"; and

(B) in paragraph (2), by striking "Director" and inserting "Board, in consultation with the Comptroller of the Currency,".

Page 166, after line 18 insert the following:

(13) In subsections (p), (q), (r), and (s), by striking "Director" each place it appears and inserting "Board".

Page 169, strike lines 1 through 4 and insert the following:

"(7) VALUATION.—

"(A) IN GENERAL.—The Board shall consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

"(B) EXCEPTION.—In the case of a savings association which has reorganized into a mutual thrift holding company under section 10(b) of the Home Owners' Loan Act and has issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association prior to December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.".

Page 204, line 14, strike "may decrease" and insert "decreases".

Page 204, beginning on line 23, strike ", on a consolidated basis," and insert "a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,".

Page 205, beginning on line 4, strike ", on a consolidated basis," and insert "a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,".

Page 205, after line 13, insert the following new section:

SEC. 1257. EFFECTIVE DATE.

Except as otherwise provided in this subtitle, the amendments made by sections 1221 through section 1253 and 1256 and subsections (a), (b), and (c)(1) of section 1254 shall take effect on the transfer date.

Page 207, line 6, strike ", on a consolidated basis," and insert "a fraternal beneficiary society, as defined in section 501(c)(8) of the Internal Revenue Code of 1986, or a company that is, together with all of its affiliates on a consolidated basis,".

Page 207, strike line 9, and insert the following:

(B) in subparagraph (F)(i), by inserting before the semicolon the following: ", including issuing credit cards and

other credit devices (including virtual or intangible devices) that function as credit cards";

(C) in subparagraph (F)(v), by inserting before the semicolon the following: ", other than loans that otherwise meet the requirements of this subparagraph and are made to businesses that meet the criteria for a small business concern to be eligible for business loans under regulations established by the Small Business Administration under part 121 of title 13, Code of Federal Regulations"; and

(D) by striking subparagraph (H) and inserting the following:

"(H) An industrial loan company, industrial bank, or other similar institution which—

"(i) is an institution organized under the laws of a State which, on March 5, 1987, had in effect or had under consideration in such State's legislature a statute which required or would require such institution to obtain insurance under the Federal Deposit Insurance Act;

"(ii) either—

"(I) does not accept demand deposits that the depositor may withdraw by check or similar means for payment to third parties;

"(II) has total assets of less than $100,000,000; or

"(III) the control of which is not acquired by any company after August 10, 1987;

"(iii) predominantly provides financial products and services to current and former members of the military and their families; and

"(iv) is controlled by a savings and loan holding company, as defined in section 10(a) of the Home Owners' Loan Act.

This subparagraph shall cease to apply to any institution which permits any overdraft (including any intraday overdraft), or which incurs any such overdraft in such institution's account at a Federal Reserve bank, on behalf of an affiliate, if such overdraft is not the result of an inadvertent computer or accounting error that is beyond the control of both the institution and the affiliate, or that is otherwise permissible for a bank controlled by a company described in section 1843(f)(1) of this title."; and

Page 208, strike line 10 and all that follows through page 209, line 7, and insert the following:

"(ii) conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

"(I) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the

company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least two-thirds of the assets or two-thirds of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

"(II) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act."; and

Page 209, strike line 15 and all that follows through page 210, line 14 and insert the following:

"(i) on the date of enactment of the Financial Stability Improvement Act of 2009, a unitary savings and loan holding company that continues to control not fewer than one savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date, and that became a bank for purposes of the Bank Holding Company Act as a result of the enactment of section 1301(a)(3) of the Financial Stability Improvement Act 2009; or".

Page 210, line 19, strike "1301(a)(3)(B)" and insert "1301(a)(4)(B)".

Page 220, after line 25, insert the following:

"(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—For purposes of this subsection, the term 'unitary savings and loan holding company' means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

"(A) that controls—

"(i) only 1 savings association; or

"(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c), 1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

"(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners' Loan Act); and

"(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.".

Page 220, after line 25, insert the following:

(8) UNITARY SAVINGS AND LOAN HOLDING COMPANY DEFINED.—Solely for purposes of this subsection, the term "unitary savings and loan holding company" means a company that was a savings and loan holding company on May 4, 1999 (as then defined), or that became a savings and loan holding company pursuant to an application pending before the Office of Thrift Supervision on or before that date, and—

(A) that controls —

(i) only 1 savings association; or

(ii) more than 1 savings association, if all, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company pursuant to a supervisory transaction under section 1823(c), 1823(i), or 1823(k) of this title, or section 408(m) of the National Housing Act (12 U.S.C. 1730a(m));

(B) all of the savings association subsidiaries of such company are qualified thrift lenders (as determined under section 10 of the Home Owners' Loan Act); and

(C) that continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office of Thrift Supervision on or before that date.

Page 222, line 18, strike "subtitle B" and insert "section 1103".

Page 223, strike line 15 and all that follows through page 224, line 11 and insert the following:

(B) A company that is required to form a section a section 6 holding company shall conduct all such activities which are permissible for a financial holding company, as determined under section 4(k), through such section 6 holding company, other than—

(i) internal financial activities conducted for such company or any affiliate, including, but not limited to internal treasury, investment, and employee benefit functions, provided that with respect to any internal financial activity engaged in for the company or an affiliate and a nonaffiliate during the year prior to date of enactment, the company (or an affiliate not a subsidiary of the section 6 company) may continue to engage in that activity so long as the at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to the company or an affiliate, subject to review by the Board to determine whether engaging in such activity presents undue risk to the section 6 company or undue systemic risk; and

(ii) financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section 6 holding company, in accordance with regulations prescribed by or orders issued by the Board, pursuant to section 6 of this Act.

Page 225, beginning on line 22, strike ", as a bank holding company".

Page 226, line 2, strike "subtitle B" and insert "section 1103".

Page 226, strike lines 7 and 8 and insert the following:

"(ii) subject to the provisions of this Act and other Federal law as provided in section 1103(g) of the Financial Stability Improvement Act of 2009; and".

Page 227, line 5, strike "subtitle A" and insert "section 1103".

Page 228, line 6, after "section 6(a)(2)(B)" insert the following: "and financial activities involving the provision of credit for the purchase or lease of products or services from an affiliate or for the purchase or lease of products produced by an affiliate of such section 6 holding company that is not a subsidiary of such section six holding company".

Page 236, strike lines 17-25.

Page 237, line 12, strike "sections 4(p) and 6" and insert "section 1301 of the Financial Stability Improvement Act of 2009".

Page 237, line 13, insert ", other than a section 6 holding company," after "company".

Page 250, beginning on line 19, strike "after subsection (y) (as added by section 1408)" and insert "at the end".

Page 250, line 21, strike "(z)" and insert "(y)".

Page 252, line 16, insert "holding" after "financial".

Page 252, beginning on line 16, strike "prudential".

Page 252, line 19, strike "greater" and insert "great".

Page 253, line 23, strike "8(c)(5)" and insert "18(c)(5)".

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.

(a) AMENDMENTS TO BANK HOLDING COMPANY ACT OF 1956.—

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking "paragraph (1)(A)" and inserting "subsection (a)".

(2) TECHNICAL CORRECTION RELATING TO CERTAIN SAVINGS BANKS.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and inserting the following new subsection:

"(i) [Repealed]".

(b) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11) the following new paragraph:

"(12) NATIONWIDE DEPOSIT CAP.—The responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.".

(2) PARALLEL REQUIREMENT.—Subparagraph (A) of section 44(b)(2) of the Federal Deposit Insurance Act 1831u(b)(2)(A)) is amended to read as follows:

"(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction involving 2 or more insured depository institutions if the resulting insured depository institution (including all insured depository institutions which are affiliates of such institution), upon consummation of the transaction would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States".

(c) AMENDMENTS TO HOME OWNERS' LOAN ACT.—Section 10(e)(2) of the Home Owners' Loan Act 1467a(e)(2)) is amended—

(1) by striking "or at the end of subparagraph (C)";

(2) by striking the period at the end of subparagraph (D) and inserting "; or"; and

(3) by inserting after subparagraph (D), the following new subparagraph:

"(E) in the case of an application involving an interstate acquisition, if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.".

Page 257, line 10, strike "assessment period" and insert "assessment period, minus additional deductions or adjustments necessary to establish assessments consistent with the definition under section 7(b)(1)(C) of the Federal Deposit Insurance Act for custodial banks (as defined by the Corporation based on factors including percentage of total revenues generated by custodial businesses and the level of assets under custody) or a bankers' bank (as referred to in section 5136 of the Revised Statutes of the United States)".

Page 275, line 15, insert "if the financial company is an insurance company or" after "section 1603".

Page 277, line 11, insert "activities" after "or".

Page 277, line 22, strike the period and insert "; and".

Page 277, after line 22, insert the following new subparagraph:

(C) that is not a Federal home loan bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

Page 278, beginning on line 2, strike "includes" and all that follows through line 3 and insert "means any entity covered by a State law designed specifically to deal with the rehabilitation, liquidation, or insolvency of an insurance company.".

Page 278, strike line 22 and all that follows through page 279, line 13, and insert the following new paragraph:

(1) VOTE REQUIRED.—

(A) IN GENERAL.—At the request of the Secretary, the Chairman of the Federal Reserve Board, or the appropriate regulatory agency, the Board and the appropriate regulatory agency shall, or on their own initiative the Board and the appropriate regulatory agency may, consider whether to make the written recommendation provided for in paragraph (2) with respect to a financial company.

(B) 2/3 AGREEMENT.—Any recommendation under subparagraph (A) shall be made upon a vote of not less than two-thirds of the members of the Federal Reserve Board then serving and not less than two thirds of any members of the board or commission then serving of the appropriate regulatory agency, as applicable.

Page 280, beginning on line 7, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 280, beginning on line 12, strike “the board of directors or commission of”.

Page 280, line 19, strike “resolution” and insert “dissolution”.

Page 282, beginning on line 8, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 282, beginning on line 20, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 2, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 5, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 9, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, beginning on line 15, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283 beginning on line 18, strike “financial holding company subject to stricter standards” and insert “financial company”.

Page 283, line 22, strike “**RESOLUTION**” and insert “**DISSOLUTION**” (and conform the table of contents accordingly).

Page 284, after line 7, insert the following new paragraphs:

(3) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (2) may be extended by the Secretary for up to 1 additional year if—

(A) the Corporation has not completed the dissolution of the company within the time provided in paragraph (2); and

(B) the Secretary certifies in writing that continuation of the receivership is necessary—

(i) to protect the best interests of the taxpayers of the United States; and

(ii) to protect the stability of the financial system and the economy of the United States.

(4) FURTHER EXTENSION.—The time limit, as extended in paragraph (3), may be extended for up to 1 additional year if—

(A) the conditions of paragraph (3) are met; and

(B) the Corporation submits a report to the Congress, no later than 60 days before the receivership will expire under the extended limit under paragraph (3), that describes in detail—

(i) the basis for the determination by the Corporation that a second extension is necessary; and

(ii) the specific plan of the Corporation for concluding the receivership before the end of the proposed additional year.

Page 284, line 8, strike “RESOLUTION” and insert “DISSOLUTION”.

Page 284, line 10, strike “resolved” and insert “dissolved”.

Page 284, line 11, strike “resolution” and insert “dissolution”.

Page 284, line 18, strike “resolution” and insert “dissolution”.

Page 285, line 6, strike “resolution” and insert “dissolution”.

Page 285, line 11, strike “resolution” and insert “dissolution”.

Page 285, line 16, strike “1602(9)(B)(iv)” and insert “1602(9)(B)(v)”.

Page 285, line 18, strike “resolution” and insert “dissolution”.

Page 287, beginning on line 1, strike “CERTAIN INSURANCE SUBSIDIARIES” and insert “INSURANCE COMPANIES AND INSURANCE COMPANY SUBSIDIARIES”.

Page 287, strike line 4 and all that follows through line 9, and insert “(a), if an insurance company covered by a State law designed specifically to deal with the rehabilitation, liquidation or insolvency of an insurance company is a covered financial company or a subsidiary of a covered financial company, resolution of such insurance company, and any subsidiary of such company, will be conducted as provided under such State law.”.

Page 287, line 13, insert before the period the following: “, that is not itself an insurance company”.

Page 287, line 22, strike “resolution” and insert “dissolution”.

Page 288, line 2, strike “resolution” and insert “dissolution”.

Page 289, line 11, strike “RESOLUTION” and insert “DISSOLUTION”.

Page 289, line 21, insert “in accordance with section 1604” before the comma after “is appointed”.

Page 299, line 11, strike “resolution” and insert “dissolution”.

Page 305, line 19, strike “resolution” and insert “dissolution”.

Page 327, line 2, strike “resolving” and insert “dissolving”.

Page 327, line 8, strike “resolution” and insert “dissolution”.

Page 370, line 15, strike “resolution” and insert “dissolution”.

Page 401, line 10, strike “$10,000,000,000” and insert “$50,000,000,000”.

Page 401, line 11, insert a comma after “inflation”.

Page 411, line 10, insert “,subject to the requirements of section 1604(g),” after “Fund”.

Page 413, line 11, strike “resolution” and insert “dissolution”.

Page 413, line 12, strike “resolution” and insert “dissolution”.

Page 425, line 8, strike “Resolution” and insert “Dissolution”.

Page 425, line 14, strike “resolution” and insert “dissolution” (and conform the table of contents accordingly).

Page 425, line 21, strike “Resolution” and insert “Dissolution”.

Page 426, line 2, strike “Resolution” and insert “Dissolution”.

Page 426, line 7, strike “Resolution” and insert “Dissolution”.

Page 426, line 8, strike “Resolution” and insert “Dissolution”.

Page 432, line 1, strike “Resolution” and insert “Dissolution”.

Page 433, line 4, strike “Resolution” and insert “Dissolution”.

Page 455, line 5, before the comma insert “(as such terms are defined in subsection (c) (1))”.

Page 461, strike lines 8 through 15 and insert the following:

(J) the Consumer Financial Protection Agency,

(K) the Federal Insurance Office,

Page 461, after line 19, insert the following new section:

SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE IN FIEC.

After section 1007 of the Federal Financial Institutions Examination Council Act of 1987 (12 U.S.C. 3306) insert the following new section:

"SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVISORY ROLE.

"Whenever the Council takes any actions with respect to issues that relate to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Federal home loan banks, the Federal Housing Finance Agency shall participate in the Council's proceedings in an advisory role.".

Page 462, beginning on line 20, strike "(as" and all that follows through line 22 and insert a comma.

Page 463, beginning on line 15, strike "(as" and all that follows through line 17 and insert a comma.

Page 464, strike lines 11 and 12 and insert "States, the".

Page 465, after line 2, insert the following new subtitle:

Subtitle L—Securities Holding Companies

SEC. 1961. SECURITIES HOLDING COMPANIES.

(a) SUPERVISION OF A SECURITIES HOLDING COMPANY NOT HAVING A BANK OR SAVINGS ASSOCIATION AFFILIATE.—

(1) IN GENERAL.—A securities holding company that is required by a foreign regulator or foreign law to be subject to comprehensive consolidated supervision and that is not—

(A) a financial holding company subject to stricter standards,

(B) an affiliate of an insured bank (other than an institution described in subparagraphs (D) or (G) of section 2(c)(2) of the Bank Holding Company Act of 1956) or a savings association,

(C) a foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978,

(D) a foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), or

(E) subject to comprehensive consolidated supervision by a foreign regulator,

may register with the Board to become supervised, pursuant to paragraph (2). Any securities holding company filing such a registration shall be supervised in accordance with this section and comply with the rules and orders prescribed by the Board applicable to supervised securities holding companies.

(2) REGISTRATION AS A SUPERVISED SECURITIES HOLDING COMPANY.—A securities holding company described in paragraph (1) shall register by filing with the Board such information and documents concerning such securities holding company as the Board, by regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section. Such supervision shall become effective 45 days after the date of receipt of such registration by the Board or within such shorter time period as the Board, by rule or order, may determine.

(b) SUPERVISION OF SECURITIES HOLDING COMPANIES.—

(1) RECORDKEEPING AND REPORTING.—

(A) IN GENERAL.—Every supervised securities holding company and each affiliate of such company shall make and keep for prescribed periods such records, furnish copies of records, and make such reports, as the Board determines to be necessary or appropriate for the Board to carry out the purposes of this section, prevent evasions, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) FORM AND CONTENTS.—Such records and reports shall be prepared in such form and according to such specifications (including certification by a registered public accounting firm), as the Board may require and shall be provided promptly at any time upon request by the Board. Such records and reports may include—

(i) a balance sheet and income statement;

(ii) an assessment of the consolidated capital of the supervised securities holding company;

(iii) an independent auditor's report attesting to the supervised securities holding company's compliance with its internal risk management and internal control objectives; and

(iv) reports concerning the extent to which the company or affiliate has complied with the provisions of this section and any regulations prescribed and orders issued under this section.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—The Board shall, to the fullest extent possible, accept reports in fulfillment of the requirements under this paragraph that the supervised securities holding company or its affiliates have been required to provide to another appropriate regulatory agency or self-regulatory organization.

(B) AVAILABILITY.—A supervised securities holding company or an affiliate of such company shall provide to the Board, at the request of the Board, any report referred to in subparagraph (A), as permitted by law.

(3) EXAMINATION AUTHORITY.—

(A) FOCUS OF EXAMINATION AUTHORITY.—The Board may make examinations of any supervised securities holding company and any affiliate of such company to carry out the purposes of this subsection, prevent evasions thereof, and monitor compliance by the company or affiliate with applicable provisions of law.

(B) DEFERENCE TO OTHER EXAMINATIONS.—For purposes of this subparagraph, the Board shall, to the fullest extent possible, use the reports of examination made by other appropriate Federal or State regulatory authorities with respect to any functionally regulated subsidiary, as defined under section 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)), or an institution described in subparagraphs (D) or (G) of section 1841(c)(2).

(c) CAPITAL AND RISK MANAGEMENT.—

(1) The Board shall, by regulation or order, prescribe capital adequacy and other risk management standards for a super-

vised securities holding company appropriate to protect the safety and soundness of the company and address the risks posed to financial stability by a supervised securities holding company. Standards imposed under this subparagraph shall take account of differences among types of business activities and—

(A) the amount and nature of the company's financial assets;

(B) the amount and nature of the company's liabilities, including the degree of reliance on short-term funding;

(C) the extent and nature of the company's off-balance sheet exposures;

(D) the extent and nature of the company's transactions and relationships with other financial companies;

(E) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system; and

(F) the nature, scope, and mix of the company's activities.

(2) In imposing standards under this subsection, the Board may differentiate among supervised securities holding companies on an individual basis or by category, taking into consideration the criteria specified above.

(3) Any capital requirements imposed under this subsection shall not take effect until the expiration of 180 days after a supervised securities holding company is provided notice of such requirement.

(d) OTHER PROVISIONS.—

(1) Subsections (b), (c) through (s), and (u) of section 8 of the Federal Deposit Insurance Act shall apply to any supervised securities holding company, and to any subsidiary (other than a bank) of a supervised securities holding company, in the same manner as they apply to a bank holding company. For purposes of applying such subsections to a supervised securities holding company or a subsidiary (other than a bank) of a supervised securities holding company, the Board shall be considered the appropriate Federal banking agency for the supervised securities holding company or subsidiary.

(2) Except as the Board may otherwise provide by regulation or order, a supervised securities holding company shall be subject to the provisions of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) in the same manner and to the same extent that bank holding companies are subject to such provisions, except that any such supervised securities holding company shall not by reason of this subparagraph be deemed a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956.

(e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) SECURITIES HOLDING COMPANY.—The term "securities holding company" means—

(A) any person other than a natural person that owns or controls one or more brokers or dealers as defined in section 3 of the Securities Exchange Act; and

(B) the associated persons of the securities holding company.

(2) SUPERVISED SECURITIES HOLDING COMPANY.—The term "supervised securities holding company" means any securities holding company that is supervised by the Board pursuant to this section.

(3) OTHER BANKING TERMS.—The terms "affiliate", "bank", "bank holding company", "company", "control", "savings association", and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956.

(4) INSURED BANK.—The term "insured bank" has the same meaning as in section 13 of the Federal Deposit Insurance Act.

(5) FOREIGN BANK.—The term "foreign bank" has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(6) ASSOCIATED PERSONS.—The terms "person associated with a securities holding company" and "associated person of a securities holding company" mean any person directly or indirectly controlling, controlled by, or under common control with, a securities holding company.

Page 480, line 12, strike "2009" and insert "2008".

Page 668, strike lines 4 and 5 and insert the following:

(13) DEPOSIT-TAKING, MONEY ACCEPTANCE, OR MONEY MOVEMENT ACTIVITY.—The term "deposit-taking, money acceptance, or money movement activities" means—

Page 669, line 15, insert "(b)," after "Subsections".

Page 669, line 20, insert "except for section 505 as it applies to section 501(b)" before the period.

Page 670, after line 9, insert the following:

(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 670, line 23, after "taking" insert ", money acceptance, or money movement".

Page 672, line 3, insert ", except that furnishing a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history shall not be considered a financial activity" before the period at the end.

Page 673, line 2, insert "a person regulated as an investment adviser by" after "or" the 1st place such term appears.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(ix) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a "financial activity" with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230

of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the provision of a consumer financial product or service.

Page 678, line 10, as modified by the amendment MWB__05, before "data is undifferentiated" insert "financial".

Page 679, line 2, insert "and shall include any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank" before the period at the end.

Page 679, beginning on line 17, strike "covered".

Page 681, strike line 18 and all that follows through line 20 and insert the following new subparagraph:

(C) an investment company that—

(i) is required to be registered under the Investment Company Act of 1940; or

(ii) is excepted from the definition of investment company under section 3(c) of such Act, or any successor provision.

Page 682, line 21, strike "the person" and insert "any person described in any subparagraph of this paragraph".

Page 682, line 23, insert ", or, with respect to a person described in subparagraph (C)(ii), any employee, agent, or contractor acting on behalf of, or providing services to any such person, but only to the extent that such person, or the employee, agent, or contractor of such person acts in such exempt capacity" before the period at the end.

Page 686, line 19, insert " or any federally recognized Indian tribe as defined by the Secretary of Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1(a))" before the period.

Page 693, line 13, before the semicolon insert the following: ", except that the Director shall not exercise any authorities that are granted to State insurance authorities under section 505(a)(6) of the Gramm-Leach-Bliley Act".

Page 693, line 14, insert ", except that Director shall not exercise any authorities that are granted to State insurance authorities under Section 505(a)(6) of the Gramm-Leach-Bliley Act" before the semicolon.

Page 696, strike line 14 and all that follows through page 697, line 9, and insert the following:

(1) APPOINTMENT.—The Director may fix the number of, and appoint and direct, all employees of the Agency.

Page 701, line 1, insert "the Federal Trade Commission," after "banking agencies,".

Page 714, strike lines 11 through 14, and insert the following:

(2) an analysis of the major problems consumers of financial products and services were confronted with during the preceding year, including a description of the nature of such problems, and recommendations for such administrative and legislative action as may be appropriate to resolve such problems;

Page 715, after line 7, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(6) an analysis of the Agency's efforts to increase workforce and contracting diversity consistent with subtitle I of title I of this Act;

Page 717, beginning on line 17, strike "and complexity of the covered person," and insert ", complexity of, risk posed by,".

Page 719, beginning on line 10, strike "and complexity of the covered person," and insert ", complexity of, risk posed by,".

Page 720, line 16, insert "in the each of the first 3 years following the date of enactment of this Act" after "persons".

Page 720, beginning on line 18, strike "the 12-month period ending on December 31, 2009" and insert "the calendar year immediately preceding the designated transfer date".

Page 720, line 24, insert ", on a risk-adjusted basis," after "that".

Page 721, line 11, insert "or to set assessments that would result in higher marginal assessments on the depository institution covered persons with assets of less than $25,000,000,000 if based on the compliance record of or higher risks posed by such covered persons" before the period.

Page 721, line 18, strike "enforcement or regulation" and insert "or enforcement activities".

Page 722, line 1, insert "so that levels of assessments under this subparagraph combined with levels of assessments by an agency responsible for chartering and or supervising the depository institution covered person shall be no more" before "than it paid".

Page 725, line 6, insert "or the CFPA Nondepository Fund, at the discretion of the Agency" before the period at the end.

Page 728, beginning on line 12, strike "as a result of the" and insert "that are reasonably related as a general matter to".

Page 743, line 3, insert "a provision of" after "reports under".

Page 743, line 4, insert "a provision of" after "title,".

Page 743, line 5, insert "any provision of" after "law,".

Page 743, line 8, insert "under that provision of law" after "exclusive authority".

Page 748, line 6, strike "$1,500,000,000" and insert "$10,000,000,000".

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of nonfinancial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended.

In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTION FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided; and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 762, line 14, strike "or".

Page 762, line 22, strike the period and insert "; or".

Page 762, after line 22, insert the following new subparagraph:

(C) any credit transaction involving a person who operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, if—

(i) the extension of retail credit or retail leases is provided directly to consumers; and

(ii) the contracts governing such extension of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

Page 764, after line 24, insert the following new subsection and redesignate subsequent subsections accordingly):

(d) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (m), the Director and the Agency shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES..—Paragraph (1) shall not apply to any person to the extent such person is engaged in any financial activity described in any subparagraph of section 101(19) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

Page 765, strike line 20 and all that follows through page 766, line 3, and insert the following new paragraph:

(3) PRESERVATION OF CERTAIN AUTHORITIES.—No provision of this title shall be construed as limiting the authority of the Director and the Agency from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

Page 766, line 13, insert "Finance" after "Housing".

Page 770, after line 4, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(3) CERTAIN ACTIVITIES NOT EXCLUDED.—

(A) IN GENERAL.—In no event shall paragraph (1) apply to any activity which involves the sale of securities or extension of credit which is provided by a person described in paragraph (1)(A).

(B) DEFINITION.—For purposes of subparagraph (A), the term "extension of credit" shall not include an ordinary account receivable.

Page 772, beginning on line 15, strike "order assessments, over" and all that follows through page 773, line 7, and insert "order assessments, over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.".

Page 776, after line 19, insert the following new subsections:

(l) EXCLUSION FOR PAWNBROKERS.—

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments, under this title with respect to any pawnbroker licensed by a State or political subdivision thereof, a territory of the United States, or the District of Columbia, but only to the extent that such person acts in such capacity and provides either—

(A) non-recourse credit secured by a possessory security interest in tangible goods physically delivered by the consumer to the pawnbroker for which the consumer does not provide a written or electronic promise, order or authorization to pay, or in any other manner authorize a debit of a deposit account, prior to or contemporaneously with the disbursement of the original proceeds; or

(B) credit or any other financial activity issued directly by a pawnbroker to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase goods or services directly from the pawnbroker.

(2) RULE OF CONSTRUCTION.—

(A) FTC AUTHORITY PRESERVED.—Except as provided in subparagraph (B), no provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission with respect to the activities described under paragraph (1).

(B) EXERCISE OF RULEMAKING AUTHORITY.—The Director may exercise any rulemaking authority regarding the activities described in paragraph (1) only as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(m) EXCLUSION FOR CERTAIN CONSUMER REPORTING AGENCIES.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over a person that is a consumer reporting agency, as such term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)), but only to the extent that such consumer reporting agency furnishes a consumer report to another person that it has reason to believe intends to use the information for employment purposes, including for security investigations, government licensing and evaluating a consumer's residential or tenant history.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4002(19) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.

(n) LIMITED AUTHORITY OF THE AGENCY TO OBTAIN INFORMATION.—Notwithstanding subsections (a), (f), (g), (h), (i), and (k), the Director may request or require information from any person subject to or described in any such subsection in order to carry out the responsibilities and functions of the Agency and in accordance with section 4206, 4501, or 4502.

Page 781, line 22, after the period insert the following: "This authority shall not prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.".

Page 787, strike line 17 and all that follows through page 788, line 10, and insert the following new subsection:

(c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES DEFINED.—

(1) UNFAIR ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is unfair shall be consistent with the standard set forth under section 5 of the Federal Trade Commission Act and with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated December 17, 1980.

(2) DECEPTIVE ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is deceptive shall be consistent with the policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act and dated October 14, 1983.

(3) ABUSIVE ACTS OR PRACTICES.—The Director and the Agency may determine that an act or practice is abusive only if the Director finds that—

(A) the act or practice is reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and

(B) the widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system.

Page 795, line 23, insert "(other than by the Agency, or by a State regulator, as may be necessary to enforce an administrative order under this section)" before the comma at the end.

Page 799, line 24, after "and" insert ", notwithstanding any other provision of this title,".

Page 815, line 11, insert "to be effected or used primarily for personal, family, or household purposes" after "funds".

Page 845, after line 13, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

(4) COVERED EMPLOYEE.—The term "covered employee" means any individual performing tasks related to the provision of a financial product or service to a consumer.

Page 878, beginning on line 5, strike "for any violation of a regulation prescribed under section 4306 or".

Page 880, strike line 16 through page 893, line 8 and insert the following:

SEC. 4507. EMPLOYEE PROTECTION.

(a) No covered person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee) has—

(1) provided information to the Agency or to any other state, local, federal, or tribal government entity, filed, instituted or caused to be filed or instituted any proceeding under this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or has testified or is

about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title; or

(2) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, or regulation, or to be unfair, deceptive, or abusive and likely to cause specific and substantial injury to one or more consumers.

(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

(i) to take affirmative action to abate the violation;

(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) If the Secretary finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary may award to the prevailing employer a reasonable attorneys' fee, not exceeding $ 1,000, to be paid by the complainant.

(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(5)(A) Unless the complainant brings an action under paragraph (4), any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d)(1) Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) Except as provided under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(e) Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under paragraph (a)(2) of this section unless the Agency determines by rule that such provision is inconsistent with the purposes of this Act.

(f) Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

Page 881, line 1, strike "provided information to" and insert "provided, caused to be provided, or is about to provide or cause to be provided information to the employer,".

Page 893, line 6, strike "(a)(2)" and insert "(a)(4)".

Page 893, after line 8 insert the following new section (and redesignate succeeding sections accordingly):

SEC. 4508. NO PRIVATE RIGHT OF ACTION.

Nothing in this title shall be construed to create a private right of action, but this section shall not be construed or interpreted to deny any private right of action arising under the enumerated consumer laws or the authorities transferred under subtitle F or H.

Page 897, beginning on line 21, strike "BACKSTOP".

Page 898, line 2, strike "4202(e)(3)" and insert "paragraph (2) or (3) of section 4202(e)".

Page 898, line 8, insert "transferred under subsection (a)" after "functions".

Page 922, beginning on line 1, strike "a Federal home loan bank, a joint office of the Federal home loan banks,".

Page 922, line 5, strike "or".

Page 922, line 6, insert ", or the Federal Home Loan Bank Board or any successor to such Board" before "shall be".

Page 922, beginning on line 23, strike "a Federal home loan bank, a joint office of the Federal home loan banks,".

Page 923, line 2, strike "or".

Page 923, line 3, insert ", or the Federal Home Loan Bank Board or any successor to such Board" before "shall be".

Page 933, line 4, insert "the Federal Home Loan Bank Board or any successor to such Board," after "Federal reserve bank".

Page 933, line 21, insert "the Federal Home Loan Bank Board or any successor to such Board," after "reserve bank".

Page 934, line 24, strike "before the designated transfer date" and insert "during the 24-month period beginning on the date of the enactment of this title".

Page 954, line 2, insert "and shall not apply to the term 'Board' when used in reference to the Federal Deposit Insurance Corporation or the National Credit Union Administration" before the period.

Page 955, line 16, strike "25(a)" and insert "25A".

Page 957, line 3, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 957, line 20, insert "(and except for any insertion of 'Federal Trade Commission' made by this subtitle)" after "subparagraph (B)".

Page 958, line 2, strike "and 129(m) (as amended by paragraph (7))" and insert "129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).".

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 960, beginning on line 1, strike "paragraph (7)(A)" and insert " paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of 'Federal Trade Commission' made by this subtitle)".

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 961, line 22, strike "(5)" and insert "(6)".

Page 961, line 22, strike "611(e)(2)" and insert "611(e)".

Page 961, line 23, strike "15 U.S.C.1681i(e)(2)" and insert "15 U.S.C. 1681i(e)".

Page 961, line 24, strike "amended to read as follows:" and insert "amended—", and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert "; and" and after such line insert the following:

(B) in the heading of paragraph (3) by inserting "CONSUMER REPORTING" before "AGENCY".

Page 962, strike lines 6 through 8 and insert the following:

(8) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting "the Federal Trade Commission," after "in consultation with";

(B) in subsection (e)(1), by striking "and the Commission" and inserting "the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission"; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

Page 962, line 11, strike "(7)" and insert "(8)".

Page 963, line 2, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 968, after line 7, insert the following (and redesignate succeeding subparagraphs accordingly):

(C) in paragraph (2) of subsection (c)—

(i) by inserting "the Agency and" before "the Federal Trade Commission" in the first sentence;

(ii) by inserting "Agency and the Federal Trade" after "provide the"; and

(iii) by inserting "Agency," before "Federal Trade Commission" in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting "Agency", before "the Federal Trade Commission"; and

(ii) inserting "Agency, the Federal Trade" after "complaint of the";

(E) in paragraph (2) of subsection (f), by inserting "the Federal Trade Commission" after "in consultation with";

Page 968, beginning on line 12, strike "with respect to a covered person described in subsection (b)" and insert ", except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections".

Page 968, line 14, strike "(D)" and insert "(G)".

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting "of Governors of the Federal Reserve System" after "Board"; and

(II) by striking "and" after the semicolon;

Page 974, line 2, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 978, line 4, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 982, line 21, strike "and" and after such line insert the following:

(iii) in paragraph (l)(B), by inserting "of Governors of the Federal Reserve System" after "Board";

Page 982, line 22, strike "(iii)" and insert "(iv)".

Page 983, line 7, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting "(other than the Consumer Financial Protection Agency)" after "title".

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting "the Consumer Financial Protection Agency," after "(including".

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting "Consumer Financial Protection Agency in consultation with the other" before "agencies"; and

(2) by striking "jointly".

Page 988, line 13, strike "and" at the end.

Page 988, line 15, strike the period and insert "; and" and after such line insert the following:

(3) by inserting "the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and" before "representatives of State insurance authorities".

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission".

Page 997, line 6, strike "25(a)" and insert "25A".

Page1016, strike line 7 through page 1018, line 5, and insert the following:

SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD ABUSE AND PREVENTION ACT.

(a) Section 4 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting "and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency under the Consumer Financial Protection Agency Act" after "Commission" each of the first 2 places it appears; and

(B) by inserting "or the Consumer Financial Protection Agency" after "Commission" the last place it appears; and

(2) in subsection (d), by inserting "or the Consumer Financial Protection Agency" after "Commission" each place such term appears.

(b) Section 5 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended—

(1) in subsection (b)—

(A) by inserting "and the Consumer Financial Protection Agency with respect to a person subject to the authority of that Agency under the Consumer Financial Protection Agency Act" after "Commission" each of the first 2 places it appears; and

(B) by inserting "or the Consumer Financial Protection Agency" after "Commission" the last place it appears; and

(2) in subsection (c), by inserting "or the Consumer Financial Protection Agency" after "Commission" each place such term appears.

(c) Section 6 of the Telemarketing and Consumer Fraud Abuse and Prevention Act (15 U.S.C. 6102) is amended by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following:

"(c) ENFORCEMENT BY THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subject to section 4202 of the Consumer Financial Protection Agency Act of 2009, this Act shall be enforced by the Consumer Financial Protection Agency, under subtitle E of that Act, with respect to a person subject to the authority of that Agency under that Act. For the purpose of the exercise by the Consumer Financial Protection Agency of its powers under subtitle E, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under the Consumer Financial Protection Agency Act. In addition to its powers under subtitle E of that Act, the Agency may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.".

Page 1019, line 8, strike "and" and after such line insert the following:

(2) by inserting a comma after "under this Act";

(3) by inserting a comma after "subsection (a)(1))"; and

Page 1019, line 9, strike "(2)" and insert "(4)".

Page 1019, line 15, insert "partnership, or corporation" after "person,".

Page 1020, after line 20, insert the following new subtitle:

Subtitle J—Miscellaneous

SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS.

Paragraph (2) of section 1505 (b) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2)) is amended by inserting after and below subparagraph (B), the following:

"Notwithstanding the preceding sentence, a State loan originator supervisory authority may provide for review of applicants and for granting exceptions, on a case-by-case basis, to the minimum standard under subparagraph (B), but only to the extent that any such exception otherwise complies with the purposes of this title.".

Page 1021, strike lines 24 and 25 and insert the following:

"(i) in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser; and".

Page 1022, strike lines 1 and 2 and insert the following:

"(ii) aggregate assets under management attributable to clients and investors in the United States in private funds advised by the investment adviser of".

Page 1022, line 20, strike "Section" and insert the following:

(a) EXEMPTION.—Section

Page 1024, after line 3, insert the following:

(b) CONSIDERATION OF RISK.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c)) is amended by adding at the end the following:

"(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.".

Page 1024, line 4, strike "**SYSTEMIC RISK**".

Page 1024, beginning on line 23, strike ", and to any other entity that the Commission identifies as having systemic risk responsibility" and insert "and to the Financial Services Oversight Council".

Page 1027, beginning on line 12, strike ", and to any other entity that the Commission identifies as having systemic risk responsibility" and insert "and to the Financial Services Oversight Council".

Page 1027, line 17, strike "such other entity" and insert "the Financial Services Oversight Council".

Page 1028, strike line 11 and all that follows through page 1029, line 2, and insert the following:

"(8) NON-DISCLOSURE OF CERTAIN PROPRIETARY INFORMATION AND CONFIDENTIALITY OF REPORTS.—Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this section 204(b) shall be subject to the same limitations on public disclosure as any facts ascertained during an examination as provided by section 210(b) of this title. The Commission may not compel the private fund to disclose such proprietary information to counterparties and creditors. For purposes of this section, proprietary information shall include sensitive, non-public information regarding the investment adviser's investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the Commission determines to be proprietary. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any report or information contained therein required to be filed with the Commission under this subsection. Nothing in this paragraph shall authorize the Commission to withhold information from the Congress or to prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an ac-

tion brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section.".

Page 1030, line 12, strike "private funds" the second place it appears and insert "investment adviser acts solely as an adviser to private funds and".

Page 1032, line 23, insert ", 203(m)," after "203(l)".

Page 1033, line 23, insert "to the extent necessary" after "regulations".

Page 1034, line 7, insert "in any rule or regulation" after "any factor used".

Page 1034, line 11, insert "by order," after "Commission shall,".

Page 1034, line 15, strike "$1,000" and insert "$100,000".

Page 1034, line 16, strike "$1,000" and insert "$100,000".

Page 1038, line 2, insert "disclosure of" after "with respect to".

Page 1041, beginning on line 13, strike "and reliable".

Page 1042, beginning on line 2, strike "or its ultimate holding company".

Page 1059, line 2, strike "; and" and insert a period.

Page 1059, strike lines 3 through 8 and insert the following:

(2) SYMBOLS.—The Commission may prescribe rules that require nationally recognized statistical rating organizations to establish credit rating symbols that distinguish credit ratings for structured products from credit ratings for other products that the Commission determines appropriate or necessary in the public interest and for the protection of investors, provided such rules do not prevent public pension funds or other State regulated entities from investing in rated products.

Page 1059, line 9, strike "(2)" and insert "(3)".

Page 1066, line 7, insert "certify that they" after "diligence services".

Page 1067, line 10, strike "service," and insert "service to that issuer, underwriter, or placement agent in determining a credit rating,".

Page 1068, line 17, strike "this title" and insert "the securities laws".

Page 1068, line 21, strike "or a similar".

Page 1090, line 14, insert "section 211 of" after "under".

Page 1090, line 18, insert after the period the following: "Nothing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.".

Page 1092, line 1, strike "(3)" and insert "(2)".

Page 1096, line 4, insert "**AND RULEMAKING**" after "**STUDY**".

Page 1096, beginning on line 9, strike "manner in which" and all that follows through "products or services" on line 12 and insert "provision of documents or information to retail customers prior to the purchase of investment products or services".

Page 1098, line 19, strike "in connection with" and insert "rules that require the provision of documents or information to retail customers prior to".

Page 1103, strike "**ADVISOR**" and insert "**ADVISER**".

Page 1109, line 11, insert "law enforcement agency," after the comma.

Page 1109, line 17, strike "or" and after such line insert the following:

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the securities laws; or

Page 1109, line 18 strike "(C)" and insert "(D)".

Page 1116, strike lines 11 through page 1118, line 13, and insert the following:

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—

"(i) the Attorney General of the United States,

"(ii) an appropriate regulatory authority,

"(iii) a self-regulatory organization,

"(iv) State attorneys general in connection with any criminal investigation, and

"(v) any appropriate State regulatory authority,

"each of which shall not disclose such information in accordance with subparagraph (A).".

Page 1123, line 13, insert "municipal financial adviser," after "transfer agent,".

Page 1123, line 22, insert "municipal financial adviser," after "transfer agent,".

Page 1124, line 6, insert "municipal financial adviser," after "municipal securities dealer,".

Page 1124, line 15, insert "municipal financial adviser," after "transfer agent,".

Page 1127, beginning on line 18, strike "head of any division or office within the Commission or his designee" and insert "Director of the Division of Enforcement of the Commission or the Director's designee".

Page 1127, beginning on line 24, strike "head of any division or office within the Commission or his designee" and insert "Director

of the Division of Enforcement of the Commission or the Director's designee".

Page 1128, beginning on line 3, strike "head of any division or office within the Commission or his designee" and insert "Director of the Division of Enforcement of the Commission or the Director's designee".

Page 1128, beginning on line 9, strike "head of any division or office within the Commission or his designee" and insert "Director of the Division of Enforcement of the Commission or the Director's designee".

Page 1128, line 24, strike "without findings" and insert ", has concluded without findings,".

Page 1129, line 3, insert "responsible for compliance examinations and inspections" after "Commission".

Page 1129, line 7, insert a comma after "inspection".

Page 1129, line 8, insert a comma after "action".

Page 1129, line 11, insert "responsible for compliance examinations and inspections" after "Commission".

Page 1129, strike line 16 through page 1131, line 2, and insert the following:

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any

place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

Page 1131, line 9, strike ''MONEY'' and insert ''MONETARY''.

Page 1133, line 21, strike ''TO ASSESS MONEY'' and insert ''TO ASSESS MONETARY''.

Page 1143, beginning on line 2, strike ''Except as provided in subsection (f), the'' and insert ''The''.

Page 1146, beginning on line 8, strike ''The jurisdiction'' and all that follows through line 11 and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction includes violations of section 17(a) of this title, and all''.

Page 1147, beginning on line 4, strike ''The jurisdiction'' and all that follows through ''subsection (a)'' and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction''.

Page 1148, beginning on line 3, strike ''The jurisdiction'' and all that follows through ''subsection (a)'' and insert ''With respect to any actions or proceedings brought or instituted by the Commission or the United States, this jurisdiction''.

Page 1149, line 18, strike the semicolon at the end.

Page 1158, line 7, insert ''and'' after ''with''.

Page 1190, line 13, strike ''that—'' and insert the following: ''that is not exempt from registration under section 203 and—''.

Page 1190, beginning on line 15, strike ''by a State'' and insert ''in the State where it maintains its principal office and place of business''.

Page 1191, line 8, insert after the first period the following: ''If no State in which an investment adviser described in subparagraph (B) is registered conducts such an examination, the investment adviser must register with the Commission. If, pursuant to this paragraph, an investment adviser would be required to register with 5 or more States, then the adviser may maintain its registration with the Commission.''.

Page 1191, strike line 10 and all that follows through page 1192, line 3, and insert the following:

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this title, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of that Act for an investment adviser registered under such Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

(b) EXCEPTIONS.—The rule adopted under subsection (a) shall include such exceptions as the Commission determines in the public interest and consistent with the protection of investors. Any exemption granted under this subsection shall ensure that at least once per year, a client described in subsection (a) shall receive a report

from an independent entity with a fiduciary responsibility to the client to verify that the assets in the client's account are in accord with those stated on the client's account statement.

(c) NO LIMITS ON OTHER ACTIONS.—Nothing in this section shall be construed to limit other actions the Securities and Exchange Commission may take under this Act to require the protection of client assets.

Page 1192, line 21, strike "maintain" and insert "assure that safeguards exist to maintain".

Page 1193, line 9, strike "regards" and insert "regard".

Page 1193, after line 10, insert the following new sections:

SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.

Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following new subsection:

"(g) DUE DILIGENCE FOR THE DELIVERY OF DIVIDENDS, INTEREST, AND OTHER VALUABLE PROPERTY RIGHTS.—

"(1) REVISION OF RULES REQUIRED.—The Commission shall revise its regulations in section 240.17Ad-17 of title 17, Code of Federal Regulations, as in effect on December 8, 1997, to extend the application of such section to brokers and dealers and to provide for the following:

"(A) A requirement that the paying agent provide a single written notification to each missing security holder that the missing security holder has been sent a check that has not yet been negotiated. The written notification may be sent along with a check or other mailing subsequently sent to the missing security holder but must be provided no later than 7 months after the sending of the not yet negotiated check.

"(B) An exclusion for paying agents from the notification requirements when the value of the not yet negotiated check is less than $25.

"(C) A provision clarifying that the requirements described in subparagraph (A) shall have no effect on State escheatment laws.

"(D) For purposes of such revised regulations—

"(i) a security holder shall be considered a 'missing security holder' if a check is sent to the security holder and the check is not negotiated before the earlier of the paying agent sending the next regularly scheduled check or the elapsing of 6 months after the sending of the not yet negotiated check; and

"(ii) the term 'paying agent' includes any issuer, transfer agent, broker, dealer, investment adviser, indenture trustee, custodian, or any other person that accepts payments from the issuer of a security and distributes the payments to the holders of the security.

"(2) RULEMAKING.—The Commission shall adopt such rules, regulations, and orders necessary to implement this subsection no later than 1 year after the date of enactment of this subsection. In proposing such rules, the Commission shall seek to minimize disruptions to current systems used by or on behalf of paying agents to process payment to account holders and avoid requiring multiple paying agents to send written notifi-

cation to a missing security holder regarding the same not yet negotiated check.''.

SEC. 7422. SHORT SALE REFORMS.

(a) SHORT SALE DISCLOSURE.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (3), (4), (5), and (6), respectively, and inserting after paragraph (1) the following:

''(2)(A) Every institutional investment manager that effects a short sale of an equity security shall also file a report on a daily basis with the Commission in such form as the Commission, by rule, may prescribe. Such report shall include, as applicable, the name of the institution, the name of the institutional investment manager and the title, class, CUSIP number, number of shares or principal amount, aggregate fair market value of each security, and any additional information requested by the Commission. For purposes of section 552 of title 5, United States Code, this subparagraph shall be considered a statute described in subsection (b)(3)(B) of such section. The information contained in reports of an institutional investment manager filed with the Commission pursuant to this section, shall be subject to the same non-disclosure and confidentiality protection provided under section 204(b)(8) of the Investment Advisers Act of 1940.

''(B) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.''.

(b) SHORT SELLING ENFORCEMENT.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) by redesignating subsections (d), (e), (f), (g), (h), and (i) as subsections (e), (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (c), the following new subsection:

''(d) TRANSACTIONS RELATING TO SHORT SALES OF SECURITIES.—It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to effect, alone or with one or more other persons, a manipulative short sale of any security. The Commission shall issue such other rules as are necessary or appropriate to ensure that the appropriate enforcement options and remedies are available for violations of this subsection in the public interest or for the protection of investors.''.

(c) INVESTOR NOTIFICATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by redesignating subsections (e), (f), (g), (h), and (i) as subsections (f), (g), (h), (i), and (j), respectively; and

(2) inserting after subsection (d) the following new subsection:

''(e) NOTICES TO CUSTOMERS REGARDING SECURITIES LENDING.—Every registered broker or dealer shall provide notice to its customers that they may elect not to allow their fully paid securities to be used in connection with short sales. If a broker or dealer uses

a customer's securities in connection with short sales, the broker or dealer shall provide notice to its customer that the broker or dealer may receive compensation in connection with lending the customer's securities. The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors, may prescribe the form, content, time, and manner of delivery of any notice required under this paragraph.".

SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.

(a) APPROVAL PROCESS.—Section 19(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2)) is amended to read as follows:

"(2) FILING PROCEDURES.—

"(A) IN GENERAL.—Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

"(i) by order approve such proposed rule change; or

"(ii) institute proceedings under subparagraph (B) to determine whether the proposed rule change should be disapproved.

"(B) PROCEEDINGS.—Proceedings to determine whether the proposed rule change should be disapproved shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 200 days from the date of receipt of a proper filing. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents. The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.".

(b) RULES.—Not later than 12 months after the date of enactment of this Act, the Commission shall issue rules implementing a disapproval process for filings submitted on or after the effective date of such rules.

Page 1196, line 5, strike "containing".

Page 1198, strike line 22 through page 1199, line 16.

Page 1199, line 17, strike "(3)" and insert "(2)".

Page 1199, line 21, strike "or (2)".

Page 1206, strike lines 15, through 23.

Page 1211 strike line 24 through page 1212, line 21, and insert the following:

(e) INSPECTIONS BY REGISTERED ACCOUNTING FIRMS.—Subsection (a) of Section 104 of such Act is amended—

(1) by striking "(a) IN GENERAL.—The Board shall" and inserting the following:

"(a) IN GENERAL.—

"(1) The Board shall"; and

(2) by adding at the end of such subsection the following:

"(2) INSPECTIONS OF AUDIT REPORT FOR BROKERS AND DEALERS.—

"(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (a)(1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

"(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

"(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

"(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (a)(2)(A) of this section.

"(3) CONFORMING AMENDMENT.—Section 17 (e)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(e) (1) (A)) is amended by striking 'registered public accounting firm' and inserting 'independent public accounting firm or by a registered public accounting firm if registration is required under the Sarbanes-Oxley Act of 2002 as amended.'.".

Page 1215, line 1, strike "dealer" and insert "dealers".

Page 1219, beginning on line 10, strike "domestic" and insert "domestically".

Page 1223, lines 5, strike "shall—" and all that follows through line 13 and insert "shall prevent the Board from responding to requests for reports from the Committee's specified under subsection (h) about the activities or programs of the Board, provided that any confidential information contained therein shall be subject to the provisions of section 105(b)(5).".

Page 1228, line 14, strike "**MISLEAD**" and insert "**MISLED**".

Page 1231, after line 15, insert the following:

(4) APPLICATION OF FIDUCIARY DUTY FOR PERSONALIZED INVESTMENT ADVICE ABOUT SECURITIES.—Nothing in this section shall diminish in any manner nor supersede the standard of conduct applicable to all brokers, dealers and investment advisers providing personalized investment advice about securities as set forth in section 7103 of this Act.

Page 1231, line 16, strike "(4)" and insert "(5)".

Page 1231, beginning on line 19, strike ", to the extent practicable, conform to the" and insert "meet or exceed".

Page 1232, strike lines 3 through page 1235, line 5, and insert the following:

(6) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—A State shall have adopted rules that govern suitability requirements in the sale of annuities which shall meet or exceed the minimum requirements established by the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation in effect on the date of the enactment of this Act, or any successor thereto.

Page 1235, line 18, strike "senior" and insert "seniors who are".

Page 1238, line 13, insert a comma after "finding".

Page 1242, line 7, insert "United States Code," after "title 18,".

Page 1243, line 9, insert "or the rules of the Municipal Securities Rulemaking Board," after "statutes,".

Page 1243, line 17, insert "or the rules of the Municipal Securities Rulemaking Board," after "statutes,".

Page 1247, line 18, insert "broker, dealer, investment adviser, municipal securities dealer, transfer agent, nationally recognized statistical rating organization, or".

Page 1248, line 1, strike "or (E)" and insert "(E), (G), or (H)".

Page 1254, line 22, strike "or".

Page 1254, line 24, strike the period at the end and insert "; or" and after such line insert the following:

(v) the independent accountant that audits the financial statements of the municipal securities issuer.

Page 1259, after line 24, insert the following new subparagraph and redesignate subsequent subparagraphs accordingly):

"(C) To monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in 24 section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance.".

Page 1261, after line 6, insert the following new paragraph:

"(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Services Oversight Council established under the Financial Stability Improvement Act of 2009.".

Page 1261, line 9, after "Secretary" insert "in coordination with the Secretary of the Department of Health and Human Services".

Page 1261, line 14, after "data" insert ", including financial data,".

Page 1262, beginning on line 2, strike "is authorized to write" and insert "writes".

Page 1262, line 3, strike "reinsure" and insert "reinsures".

Page 1262, line 4, strike "issue" and insert "issues".
Page 1278, line 13, strike "and broadened".
Page 1279, line 1, insert "Federal or State" after "any".
Page 1279, line 3, insert "with respect to such study" before "to modernize".
Page 17 of title VII of the bill, as added by the amendment TITLE7__02, strike lines 14 and 15 and insert the following:

"(A) permitting any yield spread premium or other similar compensation that would, for any mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);".

Page 17 of title VII of the bill, as added by the amendment TITLE7__02, line 25, strike "including through principal" and insert "at the option of the consumer, including through principal or rate".
Page 18 of title VII of the bill, as added by the amendment TITLE7__02, line 5, after "costs were" insert "limited by agreement with the consumer and were".
Page 33 of title VII of the bill, as added by the amendment TITLE7__02, line 24, after "that" insert "is insured by the Federal Housing Administration or".
Page 153 of title VII of the bill, as added by the amendment TITLE7__02, line 11, after "loan" insert ", other than a reverse mortgage loan insured by the Federal Housing Administration,".
Add at the end of the bill the following:

TITLE VIII—FORECLOSURE AVOIDANCE AND AFFORDABLE HOUSING

SEC. 10001. EMERGENCY MORTGAGE RELIEF.

(a) USE OF TARP FUNDS.—Using the authority available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $3,000,000,000, and the Secretary of Housing and Urban Development shall credit such amount to the Emergency Homeowners' Relief Fund, which such Secretary shall establish pursuant to section 107 of the Emergency Housing Act of 1975 (12 U.S.C. 2706), as such Act is amended by this section, for use for emergency mortgage assistance in accordance with title I of such Act.

(b) REAUTHORIZATION OF EMERGENCY MORTGAGE RELIEF PROGRAM.—Title I of the Emergency Housing Act of 1975 is amended—

(1) in section 103 (12 U.S.C. 2702)—

(A) in paragraph (2)—

(i) by striking "have indicated" and all that follows through "regulation of the holder" and insert "have certified";

(ii) by striking "(such as the volume of delinquent loans in its portfolio)"; and

(iii) by striking ", except that such statement" and all that follows through "purposes of this title"; and

(B) in paragraph (4), by inserting "or medical conditions" after "adverse economic conditions";

(2) in section 104 (12 U.S.C. 2703)—

(A) in subsection (b), by striking ", but such assistance" and all that follows through the period at the end and inserting the following: ". The amount of assistance provided to a homeowner under this title shall be an amount that the Secretary determines is reasonably necessary to supplement such amount as the homeowner is capable of contributing toward such mortgage payment, except that the aggregate amount of such assistance provided for any homeowner shall not exceed $50,000." ;

(B) in subsection (d), by striking "interest on a loan or advance"and all that follows through the end of the subsection and inserting the following: "(1) the rate of interest on any loan or advance of credit insured under this title shall be fixed for the life of the loan or advance of credit and shall not exceed the rate of interest that is generally charged for mortgages on single-family housing insured by the Secretary of Housing and Urban Development under title II of the National Housing Act at the time such loan or advance of credit is made, and (2) no interest shall be charged on interest which is deferred on a loan or advance of credit made under this title. In establishing rates, terms and conditions for loans or advances of credit made under this title, the Secretary shall take into account a homeowner's ability to repay such loan or advance of credit."; and

(C) in subsection (e), by inserting after the period at the end of the first sentence the following: "Any eligible homeowner who receives a grant or an advance of credit under this title may repay the loan in full, without penalty, by lump sum or by installment payments at any time before the loan becomes due and payable.";

(3) in section 105 (12 U.S.C. 2704)—

(A) by striking subsection (b);

(B) in subsection (e)—

(i) by inserting "and emergency mortgage relief payments made under section 106" after "insured under this section"; and

(ii) by striking "$1,500,000,000 at any one time" and inserting "$3,000,000,000";

(C) by redesignating subsections (c), (d), and (e) as subsections (b), (c), and (d), respectively; and

(D) by adding at the end the following new subsection:

"(e) The Secretary shall establish underwriting guidelines or procedures to allocate amounts made available for loans and advances insured under this section and for emergency relief payments made under section 106 based on the likelihood that a mortgagor will be able to resume mortgage payments, pursuant to the requirement under section 103(5).";

(4) in section 107—

(A) by striking "(a)"; and

(B) by striking subsection (b);

(5) in section 108 (12 U.S.C. 2707), by adding at the end the following new subsection:

"(d) COVERAGE OF EXISTING PROGRAMS.—The Secretary shall allow funds to be administered by a State that has an existing program that is determined by the Secretary to provide substantially similar assistance to homeowners. After such determination is made such State shall not be required to modify such program to comply with the provisions of this title.";

(6) in section 109 (12 U.S.C. 2708)—

(A) in the section heading, by striking "AUTHORIZATION AND";

(B) by striking subsection (a);

(C) by striking "(b)"; and

(D) by striking "1977" and inserting "2011";

(7) by striking sections 110, 111, and 113 (12 U.S.C. 2709, 2710, 2712); and

(8) by redesignating section 112 (12 U.S.C. 2711) as section 110.

SEC. 10002. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD STABILIZATION PROGRAM.

Using the authority made available under sections 101(a) and 115(a) of division A of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury shall transfer to the Secretary of Housing and Urban Development $1,000,000,000, and the Secretary of Housing and Urban Development shall use such amounts for assistance to States and units of general local government for the redevelopment of abandoned and foreclosed homes, in accordance with the same provisions applicable under the second undesignated paragraph under the heading "Community Planning and Development--Community Development Fund" in title XII of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 217) to amounts made available under such second undesignated paragraph, except as follows:

(1) Notwithstanding the matter of such second undesignated paragraph that precedes the first proviso, amounts made available by this section shall remain available until expended.

(2) The 3rd, 4th, 5th, 6th, 7th, and 15th provisos of such second undesignated paragraph shall not apply to amounts made available by this section.

(3) Amounts made available by this section shall be allocated based on a funding formula for such amounts established by the Secretary in accordance with section 2301(b) of the Housing and Economic Recovery Act of 2008 (42 U.S.C. 5301 note), except that—

(A) notwithstanding paragraph (2) of such section 2301(b), the formula shall be established not later than 30 days after the date of the enactment of this Act;

(B) the Secretary may not establish any minimum grant amount or size for grants to States;

(C) the Secretary may establish a minimum grant amount for direct allocations to units of general local government located within a State, which shall not exceed $1,000,000; and

(D) each State and local government receiving grant amounts shall establish procedures to create preferences for the development of affordable rental housing for prop-

erties assisted with amounts made available by this section.

(4) Paragraph (1) of section 2301(c) of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(5) Section 2302 of the Housing and Economic Recovery Act of 2008 shall not apply to amounts made available by this section.

(6) The fourth proviso from the end of such second undesignated paragraph shall be applied to amounts made available by this section by substituting "2013" for "2012".

(7) Notwithstanding section 2301(a) of the Housing and Economic Recovery Act of 2008, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and other territory or possession of the United States for purposes of this section and title III of division B of such Act, as applied to amounts made available by this section.

(8)(A) None of the amounts made available by this section shall be distributed to—

(i) any organization which has been convicted for a violation under Federal law relating to an election for Federal office; or

(ii) any organization which employs applicable individuals.

(B) In this paragraph, the term "applicable individual" means an individual who—

(i) is—

(I) employed by the organization in a permanent or temporary capacity;

(II) contracted or retained by the organization; or

(III) acting on behalf of, or with the express or apparent authority of, the organization; and

(ii) has been convicted for a violation under Federal law relating to an election for Federal office.

Page 204, line 14, strike "may decrease" and insert "decreases".

Page 826, after line 20, insert the following new subsection:

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Agency shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Agency.

(2) AGENCY CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Agency shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Agency—

(A) shall include a discussion of the considerations required in subsection (b) in the Federal Register notice of a final regulation prescribed pursuant to this section; and

(B) whenever the Agency determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this section shall be construed as limiting or restricting the authority of the Agency to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this section shall be construed as exempt the Agency from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this section, the term "consumer protection regulation" means a regulation that the Agency is authorized to prescribe under this title, the enumerated consumer laws, or any law or authority transferred under subtitle F or H.

Page 827, line 4, after "defendant," strike the rest of line 4 through line 6 and insert, "to enforce and secure remedies under provisions of this title or regulations issued thereunder, or otherwise provided under other law.".

Page 831, line 23, after "that" insert "directly and specifically".

Page 832, beginning on line 8, strike "National banks" and all that follows through "State laws." on line 9.

Page 832, line 9, strike "State laws are" and insert "State consumer financial laws are".

Page 832, line 11, strike "state" and insert "State consumer financial".

Page 832, strike lines 15 through 20, and insert the following:

"(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a national bank to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 832, line 21, insert "consumer financial" after "State"

Page 832, strike line 23 and all that follows through page 833, line 2 and insert the following:

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate

of a national bank (other than an institution chartered as a national bank) that is not a depository institution.

Page 833, strike lines 3 through 17 and insert the following:

"(3) CASE-BY-CASE DETERMINATION.—

"(A) DEFINITION.—The term 'case-by-case determination pursuant to this section' means a determination made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

"(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Consumer Financial Protection Agency and shall take such Agency's views into account when making the determination.

"(4) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law.

"(5) STANDARDS OF REVIEW.—

"(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency's consideration, the validity of the agency's reasoning, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

"(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

"(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order or determination made by the Comptroller of the Currency under subsection (b)(1)(B) shall be made by the Comptroller and shall not be delegable to another officer or employee of the Comptroller of the Currency.

Page 833, line 18, after "regulation" insert "or order".

Page 833, strike line 25 and all that follows through page 834, line 2, and insert the following: "prevents, significantly interferes with, or materially impairs the ability of a national bank to engage in the business of banking.".

Page 834, line 5, after "prescribe" insert "a", after "regulation" insert "or order".

Page 835, after line 9, insert new subsections as follows:

"(g) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

"(h) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

Page 835, on lines 21 and 22 strike "supervisory, examination, or regulatory" and insert "visitorial".

Page 836, strike lines 4 through 7 and renumber subsequent sections accordingly.

Page 836, line 12, after "or" delete the rest of line 12 through line 15 and insert, "nonpreempted State law against a national bank, as authorized by such law, or to seek relief as authorized by such law.".

Page 838, line 13, after "that" and insert "directly and specifically".

Page 838, beginning line 19, strike "Federal savings association" and all that follows through "State laws."

Page 838, beginning on line 20, strike "State laws are" and insert "State consumer financial laws are".

Page 838, line 22, strike "state" and insert "State consumer financial".

Page 839, strike lines 1 through 7, and insert the following:

"(B) the State consumer financial law prevents, significantly interferes with, or materially impairs the ability of an institution chartered as a Federal savings association to engage in the business of banking. Any preemption determination under this subparagraph may be made by a court or by regulation or order of the Director of the Office of Thrift Supervision in accordance with applicable law, on a case-by-case basis. Any such determination by a court shall comply with the standards set forth in subsection (d) of this section, with the court making the subsection (d) finding de novo; or

Page 839, line 8, insert "consumer financial" after "State".

Page 839, strike lines 10 through 14 and insert the following:

"(2) SAVINGS CLAUSE.—This Act does not preempt or alter the applicability of any State law to any subsidiary or affiliate of a Federal savings association (other than an institution chartered as a Federal savings association) that is not a depository institution.

Page 839, strike line 15 and all that follows through page 840, line 4 and insert the following:

"(3) CASE-BY-CASE DETERMINATION.—

"(A) DEFINITION.—The term 'case-by-case determination pursuant to this section' means a determination made by the Director concerning the impact of a particular State consumer financial law on any Federal savings association that is subject to that law, or the law of any other State with substantively equivalent terms.

"(B) CONSULTATION.—When making case-by-case determination pursuant to this section that a State consumer financial law of another State has a substantively equivalent terms as one that the Director of the Office of Thrift Supervision is preempting, the Director shall first consult

with the Consumer Financial Protection Agency and shall take such Agency's views into account when making the determination.

"(4) RULE OF CONSTRUCTION.—This Act does not occupy the field in any area of State law.

"(5) STANDARDS OF REVIEW.—

"(A) PREEMPTION.—A court reviewing any determinations made by the Director regarding preemption of a State law by this Act shall assess the validity of such determinations depending upon the thoroughness evident in the agency's consideration, the validity of the agency's reasoning, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

"(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Director in making determinations regarding the meaning or interpretation of the Home Owners' Loan Act or other Federal laws.

"(6) OTS DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Director of the Office of Thrift Supervision under subsection (b)(1)(B) shall be made by the Director and shall not be delegable to another officer or employee of the Director of the Office of Thrift Supervision.

Page 840, line 7, after "regulation" insert "or order".

Page 840, line 15, after "regulation" insert "or order".

Page 840, strike lines 22 through 24 and insert the following: "finding that the provision prevents, significantly interferes with, or materially impairs the ability of a Federal savings association to engage in the business of banking.".

Page 841, after line 23, insert new subsections as follows and renumber subsequent sections accordingly:

"(g) PRESERVATION OF POWERS RELATED TO CHARGING OF INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 4(g) of the Home Owners' Loan Act (12 U.S.C. 1463(g)) for the charging of interest by a Federal savings association at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

"(h) TRANSPARENCY OF OTS PREEMPTION DETERMINATIONS.—The Director of the Office of Thrift Supervision shall publish and update no less frequently than quarterly, a list of preemption determinations by such Director then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.

Page 842, strike lines 13 through 16 and renumber subsequent sections accordingly.

Page 842, line 22, after "law," delete the rest of line 22 through page 843, line 2 and insert, "or to seek relief as authorized by such law".

Page 30, after line 21, insert the following new subsection:

(e) STUDY OF EFFECTS CONSUMER FINANCIAL PROTECTION AGENCY REGULATIONS AND STANDARDS.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the effects that regulations and standards of the Consumer Financial Protection Agency will have on all covered persons (as such term is defined in section 4002(9)), including nondepository institution covered persons. The Director of the Consumer Financial Protection Agency shall take the findings of the study into account when issuing regulations.

(2) VALUE OF NONBANK PRODUCTS.—The study shall include an evaluation and assessment of the appropriateness of using "APR" as a true measure of the value of all nonbank products.

(3) SUBMISSION.—Not later than 240 days after the date of the enactment of this Act, the Director of the Consumer Financial Protection Agency shall submit the study to Congress and include any recommendations the Director may have for changes in law and regulations to improve consumer protections and maintain access to credit.

Page 734, strike lines 8 through 12, and insert the following:

(A) consider the potential benefits and costs to consumers, covered persons, and the Federal Government, including the potential reduction of consumers' access to consumer financial products or services, resulting from such regulation; and

Page 734, line 20, insert before the period the following: "and whether such regulation will have an inconsistent effect on nondepository institution covered persons and depository institution covered persons".

Page 747, after line 21, add the following new subsections:

(i) NO ONE SIZE FITS ALL REGULATION OF NONBANK PRODUCTS.—The Director shall be required to issue only product specific rules and regulations for each of the non-bank products under the jurisdiction of the Agency.

(j) NONBANK REGULATORY APPEAL RIGHTS.—

(1) ADMINISTRATIVE.—The Agency shall establish a procedure through which a nonbank financial company that has been given contradictory or conflicting supervisory determinations or directives from the Agency and their prudential supervisors will be able to appeal the decisions to a disinterested governing panel.

(2) JUDICIAL REVIEW.—Any nonbank financial company which has been subjected to contradictory or conflicting supervisory determinations or directives may seek judicial review by filing a petition for such review in the United States Court of Appeals for the District of Columbia.

Page 731, after line 24, insert the following new subsection:

(h) ASSESSMENTS FOR CERTAIN NONDEPOSITORY INSTITUTION COVERED PERSONS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, a nondepository institution covered person shall not be subject to assessments by the Agency if—

(A) the assets that are financial activities of that nondepository covered person represent less than a substantial portion of its total assets; and

(B) the gross revenues derived from financial activities of that nondepository covered person are less than a substantial portion of its gross revenues.

(2) EXTENSIVE CONSUMER FINANCIAL PRODUCTS OR SERVICES OPERATIONS.—Paragraph (1) shall not apply to nondepository institution covered person that the Director determines has a level of assets or revenues derived from financial activities, a number of transactions in consumer financial products or services, or a number of accounts relating to consumer financial products or services that the Director determines represents an extensive consumer financial products or services operation.

Page 1068, line 7, strike "knowingly or recklessly violated" and insert "was grossly negligent in violating".

Page 1068, beginning on line 18, strike "knowledge and recklessness" and insert "gross negligence".

Page 1019, line 22, strike "57a(b)" and insert "57a".

Page 1019, after line 22, insert the following:

(1) in subsection (a)(1), by striking "(h)" and inserting "(f)";

Page 1019, line 23, strike "(1)" and insert "(2)".

Page 1020, strike lines 6 through 13 and insert the following:

(3) by striking subsection (c);

(4) in subsection (d), by striking "(d)(1) The Commission's" and all that follows through the end of paragraph (2) and by redesignating paragraph (3) of such subsection as subsection (c);

(5) In such subsection (c) (as so redesignated), by inserting "prescribed" after "any rule";

(6) by striking subsections (f), (i), and (j) and redesignating subsections (e), (g), and (h) as subsections (d), (e), and (f), respectively;

Page 1020, line 14, strike "(4)" and insert "(7)".

Page 1020, after line 14, insert the following:

(A) in paragraph (1)(A), by striking "promulgated" and inserting "prescribed";

Page 1020, line 15, strike "(A)" and insert "(B)".

Page 1020, strike lines 17 through 20 and insert the following:

(C) in paragraph (3), by striking "The court shall hold unlawful" and all that follows through the end of the paragraph; and

(D) by striking paragraphs (4) and (5) and inserting the following:

"(4) The procedure set forth in this subsection for judicial review of a rule prescribed under subsection (a)(1)(B) is the exclusive means for such review, other than in an enforcement proceeding."; and

(7) in subsection (e)(2) (as so redesignated), by striking "class or persons" and inserting "class of persons".

Page 754, after line 1, add the following new subsection at the end of section 4203:

(h) ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL INSTITUTIONS.—

(1) ESTABLISHMENT; PURPOSE.—There is established in the Agency an office to be known as the "Assistive Division for Community Financial Institutions" to advise the Director on the impact of Agency policies and regulations on community financial institutions and to help ensure that the policies and regulations of the Agency do not unduly burden community financial institutions.

(2) ADDITIONAL DUTIES.—The Assistive Division for Community Financial Institutions shall also—

(A) provide assistance to and respond to inquiries from community financial institutions regarding policies of the Agency and the effects of such policies on community financial institutions;

(B) provide educational materials, training aides, and support to community financial institutions with respect to any new regulatory obligations the Agency establishes during the initial rule-making period;

(C) establish and maintain a toll-free telephone number, to be available at least 8 hours a day and 7 days a week, at which community financial institution may make inquiries and receive assistance under subparagraph (A); and

(D) perform other duties and exercise such other powers set by the Director.

Page 949, after line 2, add the following new section (and update the table of contents appropriately):

SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.”.

In subtitle H of title VII (relating to mortgage reform) insert “**and Data Collection**” after “**Reports**”

At the end of title VII (relating to mortgage reform), add the following new section (and update the table of contents appropriately):

SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.

(a) IN GENERAL.—Section 104(a) of the Helping Families Save Their Homes Act of 2009 (division A of Public Law 111–22) is amended—

(1) in paragraph (2), by striking “resulting” and inserting “in each State that result”;

(2) in paragraph (3), by inserting “each State for” after “modifications in”; and

(3) in paragraph (4), by inserting “in each State” after “total number of loans”.

(b) CONFORMING AMENDMENT.—Section 104(b)(1)(A) of such Act is amended by adding at the end the following sentence: “Not later than 60 days after the date of the enactment of the Wall Street Re-

form and Consumer Protection Act of 2009, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall update such requirements to reflect amendments made to this section by such Act.''.

Page 119, strike lines 12 to 13 and insert the following new paragraph:

(1) the Board determines that a specified financial company fails to meet prudential standards established by the Board; or

Page 1035, line 4, strike ''Section'' and insert ''(a) IN GENERAL.— Section''.

Page 1035, strike lines 7 and 8 and insert the following:

(A) by amending paragraph (1)(A) to read as follows:

''(A) IN GENERAL.—Each credit rating agency shall register as a nationally recognized statistical rating organization for the purposes of this title (in this section referred to as the 'applicant'), and shall file with the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).''.

Page 1035, line 10, strike ''and''.

Page 1035, line 12, insert ''and'' after the semicolon and after such line insert the following:

(D) by adding at the end of paragraph (1) the following:

''(F) EXEMPTIONS.—The registration requirement in subparagraph (A) shall not apply to—

''(i) a credit rating agency if the credit rating agency—

''(I) does not engage in the provision of credit ratings to issuers of securities for a fee; and

''(II) issues credit ratings only in any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

''(ii) such other persons as the Commission may designate by rules and regulations or order when in the public interest and for the protection of investors.''.

Page 1067, after line 20, insert the following:

(b) CONFORMING AMENDMENT.—Section 3(a)(62) of the Securities Exchange Act of 1934 is amended by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

Page 731, after line 24, insert the following:

(4) FINANCIAL EDUCATION AND COUNSELING PROGRAM.—

(A) IN GENERAL.—To the extent such victims cannot be located or such payments are otherwise not practicable, 5 percent of the Victims Relief Fund shall be transferred, up to $10,000,000 on an annual basis, to the Secretary of the Treasury so that the Secretary may carry out the Financial Education and Counseling Grant Program established under section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701).

(B) MEMORANDUM OF UNDERSTANDING.—Not later than 12 months after the date of enactment of this subtitle, the Director shall enter into a memorandum of understanding

with the Secretary of the Treasury to coordinate the release of Civil Penalty Fund amounts under subparagraph (A).

(C) ASSISTANCE FOR INDIVIDUALS AT FINANCIAL RISK.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701) is amended—

(i) in subsection (a), by striking "prospective homebuyers" each place that term appears and inserting "individuals at financial risk";

(ii) in subsection (b)—

(I) in paragraph (1), by striking "prospective homebuyers" and inserting "individuals at financial risk"; and

(II) by adding at the end the following:

"(3) DETERMINATION OF FINANCIAL RISK.—For purposes of this section, the Director of the Consumer Financial Protection Agency shall establish the criteria used to determine whether an individual is at financial risk, and the Secretary shall use such criteria when selecting organizations under paragraph (2)."; and

(iii) in subsection (c)(1)—

(I) in subparagraph (A), by striking "or";

(II) in subparagraph (B), by striking the period and inserting "; or"; and

(III) by adding at the end the following:

"(C) a nonprofit corporation that—

"(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

"(ii) specializes or has expertise in working with individuals at financial risk.".

Page 1278, after line 17 insert the following:

(7) Geographic disparities in access to and cost of insurance products.

Page 35, line 25, insert "compelled to waive and shall not be" after "be".

Page 26, line 22, strike ""DEPARTMENT OF THE TREASURY" and insert "VOTING MEMBERS OF THE COUNCIL".

Page 26, line 23, insert "and all other voting members of the Council may, with the approval of the Council," after "shall".

Page 27, line 10, strike "Secretary of the Treasury" and insert "Council".

Page 33, after line 10, insert the following new section (and conform the table of contents accordingly):

SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF AGENT ACTING ON BEHALF OF COUNCIL.

For purposes of this subtitle, the Board of Governors of the Federal Reserve System shall act in the capacity of agent for the Council, acting on behalf of the Council.

Page 1028, after line 10, insert the following new paragraph (and redesignate the subsequent paragraph):

"(8) APPLICABLE PRIVILEGES NOT WAIVED.—An investment advisor, and investment advisor to a private fund, a private fund, foreign private fund advisor, a foreign private fund, an advisor to a venture capital fund, a venture capital fund, or other person shall not be compelled to waive and shall not be

deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

"(A) the Financial Services Oversight Council; (B)

"(B) the Commission;

"(C) any Federal financial regulator or State financial regulator, in any capacity; or

"(D) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).".

Page 701, after line 9, insert the following:

(D) CONSUMER COMPLAINT WEBSITE.—The Director shall establish an Internet website for consumer complaints and inquiries concerning institutions regulated by the Agency. The website shall be interoperable with the database established under subparagraph (A).

Page 825, after line 12, insert the following:

SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Director shall promulgate a new rule that requires banks to prominently place in each consumer branch office information regarding the fees and charges associated with enrollment in the bank's overdraft protection program.

Page 1230, line 15, strike "$500,000" and insert "1,000,000".

Page 1230, line 18, strike "$100,000" and insert "250,000".

Page 1236, line 13, strike "$8,000,000" and insert "16,000,000".

Page 93, line 8, insert "pursuant to subsection (e)(5)" after "action".

Page 93, beginning line 12, insert the following new subsection:

(i) RULE OF CONSTRUCTION.—Nothing in subsection (h) shall be construed as limiting the authority of a Federal financial regulatory agency to take action with respect to a financial company subject to the jurisdiction of such agency pursuant to applicable law other than this section.

Page 22, after line 12, insert the following new subparagraph:

(C) A State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners, provided that the term for which a State securities commissioner may serve shall last no more than the 2-year period beginning on the date that the commissioner is selected.

Page 253, after line 21, insert the following new paragraph:

(3) Section 4(j) of the Bank Holding Company Act of 1956 is amended by inserting after paragraph (4) the following new paragraph (and redesignating succeeding paragraphs accordingly):

"(5) FINANCIAL STABILITY.—

"(A) IN GENERAL.—In every case, the Board shall take into consideration the extent to which the proposed acquisition, merger, or consolidation may pose risk to the stability of the United States financial system or the economy of the United States, including the resulting scope, nature, size, scale, concentration, or interconnectedness of activities that are financial in nature.

"(B) STANDARDS FOR APPROVAL.—The Board may, in the sole discretion of the Board, disapprove any acquisition, merger, or consolidation of, or by, a financial holding company subject to stricter standards if the Board determines that the resulting concentration of liabilities on a consolidated basis is likely to pose a great threat to financial stability during times of severe economic distress.".

Page 255, after line 2, insert the following new section:

SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MUTUAL BANK HOLDING COMPANIES AUTHORIZED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5133 the following new sections:

"SEC. 5133A. MUTUAL NATIONAL BANKS.

"(a) IN GENERAL.—Notwithstanding the section designated the 'Third' of section 5134, in order to provide mutual institutions for the deposit of funds, the extension of credit, and provision of other services, the Comptroller of the Currency may charter mutual national banks either de novo or through a conversion of any insured depository institution or any State mutual bank or credit union, subject to regulations prescribed by the Comptroller of the Currency in accordance with this section. The powers conferred by this section are intended to provide for the creation and maintenance of mutual national banks as bodies corporate existing in perpetuity for the benefit of their depositors and the communities in which they operate.

"(b) REGULATIONS.—

"(1) REGULATIONS OF THE COMPTROLLER.—The Comptroller of the Currency is authorized to prescribe appropriate regulations for the organization, incorporation, examination, operation, and regulation of mutual national banks. Except to the extent that such existing regulations conflict with sections 5133A and 5133B, mutual national banks shall be subject to the regulations of the Director of the Office of Thrift Supervision governing corporate organization, governance, and conversion of mutual institutions, as in effect on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009, including parts 543, 544, 546, 563b, and 563c of chapter V of title 12, Code of Federal Regulations (as in effect on that date), for up to 3 years beginning on the date of the enactment of the Wall Street Reform and Consumer Protection Act of 2009.

"(2) APPLICABILITY OF CAPITAL STOCK REQUIREMENTS.—The Comptroller of the Currency shall prescribe regulations regarding the manner in which requirements of this title with respect to capital stock, and limitations imposed on national banks under this title based on capital stock, shall apply to mutual national banks.

"(c) CONVERSIONS.—

"(1) CONVERSION OF A MUTUAL DEPOSITORY TO A MUTUAL NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any mutual depository may

convert to a mutual national bank by filing with the Comptroller of the Currency a notice of its election to convert on a specified date that is not earlier than 30 days after the date on which the notice is filed, and the mutual depository shall be converted to a mutual national bank charter on the date specified in the notice.

"(2) CONVERSION TO STOCK NATIONAL BANK.—Subject to such regulations as the Comptroller of the Currency may prescribe for the protection of depositors' rights and for any other purpose the Comptroller of the Currency may consider appropriate, any national bank that is organized in the mutual form under subsection (a) may reorganize as a stock national bank.

"(3) CONVERSION TO STATE BANKS.—Any national mutual bank may convert to a State bank charter in accordance with regulations prescribed by the Comptroller of the Currency and applicable State law.

"(d) TERMINATING MUTUALITY.—If a mutual national bank elects to terminate mutuality, it must do so by—

"(1) liquidating; or

"(2) converting to a national banking association operating in stock form.

"(e) STATUS AND RIGHTS OF MEMBERS.—

"(1) In general, the status of a member is primarily that of a depositor and secondarily that of a holder of a contingent right to participate in the equity of a mutual national bank upon a liquidation or conversion.

"(2) Each member of a mutual national bank shall have the following rights:

"(A) Such rights as may be agreed upon, by contract, between the member and the mutual national bank.

"(B) The right to vote for members of the board of directors of the mutual national bank.

"(C) The right to attend any meeting of members properly called by the board of directors of a mutual national bank.

"(D) In the event the board of directors, in its sole discretion, determines a conversion of a mutual national bank to a national banking association operating in stock form is in the best interests of the community in which the bank operates and the members approve the conversion through a special proxy, then the members as of a record date set by the board of directors shall have the first right to subscribe for and purchase stock in the converted bank.

"(E) In the event the board of directors, in its sole discretion, determines a liquidation of the mutual national bank is in the best interests of the community in which the bank operates and the members approve the liquidation, or if for any other reason the bank is liquidated by operation of law, then the members as of the date of liquidation shall have the right to have credited to their accounts, on a pro rata basis, any residual assets left after the liquidation of the mutual national bank.

"(3) In the consideration of all questions requiring action by the members of a national mutual bank, the bank may provide in its charter that each member shall be permitted (i) one vote

per member, or (ii) to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account, but not more than 1,000 votes per member.

"(f) PROXIES.—

"(1) A member may give, in writing or electronically, a perpetual proxy to a committee of the board of directors of a mutual depository, provided that the member may revoke such a proxy in writing or electronically, with such revocation to take effect after six business days.

"(2) Such proxies may be used to vote on any issue requiring approval of the members, including the conversion of a mutual depository into a mutual national bank and the reorganization of a mutual national bank into a Federal mutual bank holding company, except that, without a prior finding by the regulator of the mutual national bank that such action is needed to avoid loss to the Federal Deposit Insurance Corporation's deposit insurance fund or to protect the stability of the United States financial system, such proxies may not be used to vote in favor of—

"(A) terminating mutuality for a mutual national bank or a Federal mutual bank holding company;

"(B) permitting the modification of a Federal mutual bank holding company; or

"(C) issuing mutual capital certificates (except when used to found a mutual national bank or a Federal mutual bank holding company de novo).

"(3) Proxies given by a member, in writing or electronically, to management of, or to a committee of the board of directors of, a mutual depository shall not be deemed to have been revoked solely because of, and shall continue to exist following, a conversion to a mutual national bank and any concurrent or subsequent reorganization to a Federal mutual bank holding company.

"(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(2) MUTUAL NATIONAL BANK.—The term 'mutual national bank' means a national banking association that operates in mutual form and is chartered by the Comptroller of the Currency under this section.

"(3) MUTUAL DEPOSITORY.—The term 'mutual depository' means a depository institution that is organized in non-stock form, including a Federal non-stock depository and any form of non-stock depository provided for under State law, the deposits of which are insured by an instrumentality of the Federal Government.

"(4) MUTUALITY.—The term 'mutuality' means the quality of being an insured depository institution organized under a Federal or State law providing for the organization of non-stock depository institutions, or a holding company organized under a Federal or State law providing for the organization of non-stock entities that control one or more depository institutions.

"(5) MEMBER.—The term 'member' means each tax-liable depositor in a mutual depository's savings, demand, or other authorized depository accounts and each tax-liable depositor in such an account in a depository subsidiary of a Federal mutual bank holding company.

"(6) TAX LIABLE DEPOSITOR.—The term 'tax liable depositor' means the single person responsible for paying any Federal taxes due on any interest paid on any deposits held within any savings, demand, or other authorized depository account or accounts with any mutual depository.

"(7) MEMBERSHIP RIGHTS.—The term 'membership rights' means the rights of each member under this section.

"(h) CONFORMING REFERENCES.—Unless otherwise provided by the Comptroller of the Currency—

"(1) any reference in any Federal law to a national bank operating in stock form, including a reference to the term 'national banking association', 'member bank', 'national bank', 'national association', 'bank', 'insured bank', 'insured depository institution', or 'depository institution', shall be deemed to refer also to a mutual national bank;

"(2) any reference in any Federal law to the term 'board of directors', 'director', or 'directors' of a national bank operating in stock form shall be deemed to refer also to the board of a mutual national bank; and

"(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms 'stock', 'shares', 'shares of stock', 'capital stock', 'common stock', 'stock certificate', 'stock certificates', 'certificates representing shares of stock', 'stock dividend', 'transferable stock', 'each class of stock', 'cumulate such shares', 'par value', 'preferred stock' shall not apply to a mutual national bank, unless the Comptroller of the Currency determines that the context requires otherwise.

"SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPANIES.

"(a) REORGANIZATION OF MUTUAL NATIONAL BANK AS A HOLDING COMPANY.—

"(1) IN GENERAL.—Subject to approval under the Bank Holding Company Act of 1956, a mutual national bank may reorganize so as to become a Federal mutual bank holding company by submitting a reorganization plan to the appropriate bank holding company regulator.

"(2) PLAN APPROVAL.—Upon the approval of the reorganization plan by the appropriate bank holding company regulator and the issuance of the appropriate charters—

"(A) the substantial part of the mutual national bank's assets and liabilities, including all of the bank's insured liabilities, shall be transferred to a national banking association, a majority of the shares of voting stock of which is owned, directly or indirectly, by the mutual national bank that is to become a Federal mutual bank holding company; and

"(B) the mutual national bank shall become a Federal mutual bank holding company.

“(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS’ APPROVAL OF PLAN REQUIRED.—This subsection does not authorize a reorganization unless—

“(1) a majority of the mutual national bank’s board of directors has approved the plan providing for such reorganization; and

“(2) a majority of members has approved the plan at a meeting held at the call of the directors under the procedures prescribed by the bank’s charter and bylaws.

“(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—To avoid terminating mutuality, a Federal mutual bank holding company must own, directly or indirectly, a majority of the shares of voting stock of each of its depository subsidiaries.

“(d) NO TERMINATION OF MUTUALITY.—Neither a reorganization of a mutual depository nor a modification of a Federal mutual bank holding company shall cause a termination of mutuality.

“(e) RETENTION OF CAPITAL.—In connection with a transaction described in subsection (a), a mutual national bank may, subject to the approval of the appropriate bank holding company regulator, retain capital at the holding company level to the extent that the capital retained at the holding company level exceeds the amount of capital required for the national banking association chartered as a part of a transaction described in subsection (a) to meet all relevant capital standards established by the Comptroller of the Currency for national banking associations.

“(f) TERMINATING MUTUALITY.—If a Federal mutual bank holding company elects to terminate mutuality, it must do so by either liquidating or converting to a bank holding company operating in stock form.

“(g) MEMBERSHIP RIGHTS.—Holders of savings, demand, or other authorized depository accounts in a depository subsidiary of a Federal mutual bank holding company shall have the same membership rights with respect to the Federal mutual bank holding company as those holders would have had if the depository subsidiary of the Federal mutual bank holding company had been a mutual national bank.

“(h) REGULATION.—A Federal mutual bank holding company shall be—

“(1) chartered by the appropriate bank holding company regulator and shall be subject to such regulations as the appropriate bank holding company regulator shall prescribe; and

“(2) regulated under the Bank Holding Company Act of 1956 on the same terms and subject to the same limitations as any other company that controls a bank.

“(i) CAPITAL IMPROVEMENT.—

“(1) PLEDGE OF STOCK OF NATIONAL BANK SUBSIDIARY.—This section shall not prohibit a Federal mutual bank holding company from pledging all or a portion of the stock of the national banking association chartered as part of a transaction described in subsection (a) to raise capital for such national banking association.

“(2) ISSUANCE OF NONVOTING SHARES.—This section shall not prohibit a national banking association chartered as part of a transaction described in subsection (a) from issuing any nonvoting shares or less than 50 percent of the voting shares of

such bank to any person other than the Federal mutual bank holding company.

"(j) INSOLVENCY AND LIQUIDATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the appropriate bank holding company regulator may file a petition under chapter 7 of title 11, United States Code, with respect to a Federal mutual bank holding company upon—

"(A) the default of any national bank—

"(i) the stock of which is owned by the Federal mutual bank holding company; and

"(ii) that was chartered in a transaction described in subsection (a); or

"(B) a foreclosure on a pledge by the Federal mutual bank holding company described in subsection (i)(1).

"(2) DISTRIBUTION OF NET PROCEEDS.—Except as provided in paragraph (3), the net proceeds of any liquidation of any Federal mutual bank holding company under paragraph (1) shall be transferred to persons who hold membership interests in such Federal mutual bank holding company.

"(3) RECOVERY BY FDIC.—If the Federal Deposit Insurance Corporation incurs a loss as a result of the default of any insured bank subsidiary of a Federal mutual bank holding company that is liquidated under paragraph (1), the Federal Deposit Insurance Corporation shall succeed to the interests of the depositors of the bank as members in the Federal mutual bank holding company, to the extent of the Federal Deposit Insurance Corporation's loss.

"(k) DEFINITIONS.—

"(1) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'Federal mutual bank holding company' means a holding company that is organized in mutual form and owns, directly or indirectly, a majority of the shares of voting stock of one or more depository subsidiaries of a Federal mutual bank holding company.

"(2) DEPOSITORY SUBSIDIARY OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'depository subsidiary of a Federal mutual bank holding company' means a depository institution organized in stock form that is insured by the Federal Deposit Insurance Corporation, the majority of the shares of voting stock of which are owned by the Federal mutual bank holding company or its wholly owned subsidiaries and none of the shares of stock of which are pledged or otherwise subjected to lien except as permitted in subsection (i).

"(3) REORGANIZATION OF A MUTUAL DEPOSITORY.—The term 'reorganization of a mutual depository' means the conversion of a mutual depository into a depository subsidiary of a Federal mutual bank holding company.

"(4) MODIFICATION OF A FEDERAL MUTUAL BANK HOLDING COMPANY.—The term 'modification of a Federal mutual bank holding company' means either (A) the sale of shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company to any party other than the subsidiary's parent Federal mutual bank holding company or a wholly owned subsidiary of that parent, or (B) the voluntary

grant of a lien on shares of common or preferred stock in a depository subsidiary of a Federal mutual bank holding company.

"(5) DEFAULT.—With respect to a national bank, the term 'default' means an adjudication or other official determination by any court of competent jurisdiction, the Comptroller of the Currency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for the national bank.

"(l) CONFORMING REFERENCES.—Unless otherwise provided by the appropriate bank holding company regulator—

"(1) any reference in any Federal law to a bank holding company operating in stock form shall be deemed to refer also to a Federal mutual bank holding company;

"(2) any reference in any Federal law to the term 'board of directors', 'director', or 'directors' of a national bank operating in stock form shall be deemed to refer also to the board of a Federal mutual bank holding company; and

"(3) any terms in Federal law that may apply only to a national bank operating in stock form, including the terms 'stock', 'shares', 'shares of stock', 'capital stock', 'common stock', 'stock certificate', 'stock certificates', 'certificates representing shares of stock', 'stock dividend', 'transferable stock', 'each class of stock', 'cumulate such shares', 'par value', 'preferred stock' shall not apply to a Federal mutual bank holding company, unless the appropriate bank holding company regulator determines that the context requires otherwise.".

(b) LIMITATION ON FEDERAL REGULATION OF STATE BANKS.—Except as otherwise provided in Federal law, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation may not adopt or enforce any regulation that contravenes the corporate governance rules prescribed by State law or regulation for State banks unless the Director, Board, or Corporation finds that the Federal regulation is necessary to assure the safety and soundness of the State banks.

(c) TECHNICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq) is amended by inserting after the item relating to section 5133 the following new items:

"5133A. Mutual national banks
"5133B. Federal mutual bank holding companies"

(d) APPROPRIATE FEDERAL BANKING AGENCY FOR FEDERAL MUTUAL BANK HOLDING COMPANIES.—Section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)) is amended by inserting after subparagraph (F) the following new subparagraph:

"(G) supervisory or regulatory proceedings arising from the authority given to the appropriate bank holding company regulator under section 5133B of the Revised Statutes of the United States.".

(e) MUTUAL HOLDING COMPANY CONVERSION.—

(1) IN GENERAL.—Any mutual holding company, including any form of mutual depository holding company provided for under State law, may convert to a Federal mutual bank holding company by filing with the appropriate bank holding company regulator a notice of its election to convert on a specified

date that is not earlier than 30 days after the date on which the notice is filed, and the mutual holding company shall be converted to a Federal mutual holding company charter on the date specified in the notice.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) FEDERAL MUTUAL BANK HOLDING COMPANY.—The term "Federal mutual bank holding company" has the same meaning as in section 5133B of the Revised Statutes of the United States (as added by this section); and

(B) MUTUAL HOLDING COMPANY.—The term "mutual holding company" has the same meaning as in section 10(o)(10)(A) of the Home Owners Loan Act as in effect on the day before the date of enactment of this Act.

(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

Page 255, after line 2, insert the following new section (and conform the table of contents accordingly):

SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE ACQUISITIONS.

(a) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) CONCENTRATION LIMIT FOR BANK HOLDING COMPANIES.—Section 3(d)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1842(d)(2)(A)) is amended by striking "paragraph (1)(A)"" and inserting "subsection (a) of this section".

(2) REMOVAL OF NONBANK SAVINGS ASSOCIATION PROVISION IN LIGHT OF BEING DEFINED AS A BANK.—Section 4 of the Bank Holding Company Act is amended by striking subsection (i) and insert the following new subsection:

"(i) [Repealed.]".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(e) of the Federal Deposit Insurance Act (12 U.S.C. I 828(c)) is amended—

(A) by redesignating paragraph (12) as paragraph (13); and

(B) by inserting after paragraph (11), the following new paragraph:

"(12) NATIONWIDE DEPOSIT CAP.—The responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of, the total amount of deposits of insured depository institutions in the United States.".

(2) PARALLEL REQUIREMENT.—Section 44(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(2)(A) is amended to read as follows:

"(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction involving two or more insured depository institutions if the resulting insured depository institution (including all insured depository institutions which are affiliates of such institution), upon consumma-

tion of the transaction would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.''.

(c) AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—Section 10(e)(2) of the Home Owners' Loan Act (12 U.S.C. 467a(e)(2)) is amended—

(1) by striking "or" at the end of subparagraph (C); and

(2) by striking the period at the end of subparagraph (D), the following new subparagraph:

"(E) in the case of an application involving an interstate acquisition, if the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the acquisition for which such application is filed would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.''.''.

Page 763, beginning online 11, strike "authority to exercise" and all that follows through "this title" and insert "rulemaking, supervisory, enforcement or other authority, including the authority to order assessments, under this title".

Page 436, after line 11, insert the following new section:

SEC. 1615. TREASURY STUDY.

(a) STUDY REQUIRED.—The Secretary shall carry out a study analyzing how the resolution authority provided under this subtitle should be funded. Such study shall consider the following factors:

(1) The consequences of any assessments on the overall recovery of the economy of the United States.

(2) Any immediate or continuing consequences of assessments on other aspects of the economy of the United States, including job creation, public and private investments, small business loans, and general credit availability.

(3) The consequences of any assessments on individual sectors of the financial services industry.

(4) The consequences of any assessments on the financial integrity on individual firms within each sector of the financial services industry.

(5) The appropriateness and effect of assessments on firms that are subject to separate assessments under existing State or Federal depositor, policyholder, or investor protection mechanisms and the consequences of any such assessments on these mechanisms themselves.

(6) The implications of assessments on all relevant stakeholders, including taxpayers, depositors, insurance policyholders, investors, counterparties, and creditors.

(7) Evaluation of the appropriate assessment base, including but not limited to factors such as assets and liabilities, assets under management, policyholder reserves, other reserves, statutory and regulatory capital requirements, trusteed assets, and deposits and inflationary factors.

(b) REPORT.—Not later than the end of the 6-month period beginning on the date of the enactment of this subtitle, the Secretary shall issue a report to the Congress containing all determinations and conclusions made by the Secretary in carrying out the study required under subsection (a).

Page 894, after line 4, add at the end of section 4601(a)(1) the following new subparagraph:

(C) RETENTION OF CONSUMER ADVISORY COUNCIL.—

(i) RETENTION AND CONTINUATION.—Notwithstanding the transfer of functions under subparagraph (A), the Consumer Advisory Council established by the Board of Governors pursuant to section 703(b) of Public Law 90–321 (15 U.S.C. 1691b(b)) shall continue as an entity within the Federal Reserve System.

(ii) ADDITIONAL FUNCTIONS.—In addition to the functions performed by the Consumer Advisory Council as of the designated transfer date, the Consumer Advisory Council shall—

(I) submit to the Director (and make available to the public) an annual set of recommendations for consumer protection regulations and meet with the Director to discuss the annual recommendations;

(II) meet with the Board of Governors of the Federal Reserve System at least once a year and provide oral or written representations concerning matters within the jurisdiction of the Board; and

(III) call for information and make recommendations in regard to consumer protection regulations.

(iii) RESPONSE TO RECOMMENDATIONS.—When the Chair of the Federal Reserve testifies before Congress, the Chair shall also testify about the recommendations of the Consumer Advisory Council under clause (ii)(II) and its recommendations for consumer protection regulations.

Page 216, line 21, strike “or”.

Page 216, after line 21, insert the following new subparagraphs:

“(II) a change of control of an industrial bank, its section 6 holding company, or any entity that directly or indirectly controls the industrial bank, in a transaction other than a merger described in subclause (I), by an acquiring company that is predominately engaged in activities not permissible for a financial holding company pursuant to subsection (k), if—

“(aa) the transaction is approved by the appropriate Federal banking agency and the Board; and

“(bb) the industrial bank does not thereafter establish a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)),

“(III) an inadvertent acquisition of control, as determined by the Board, if such inadvertent acquisition of control is reversed or rectified within 180 days of its discovery, or”.

Page 216, line 22, strike “(II)” and insert “(IV)”.

Page 669, line 15, insert “(b),” after “Subsections”.

Page 669, line 20, insert “except for section 505 as it applies to section 501(b)” before the period.

Page 670, after line 9, insert the following:

(N) Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

(O) The Unlawful Internet Gambling Enforcement Act of 2006.

Page 701, line 1, insert "the Federal Trade Commission," after "banking agencies,".

Page 714, line 13, strike "received and collected" and insert "identified".

Page 743, line 3, insert "a provision of" after "reports under".

Page 743, line 4, insert "a provision of" after "title,".

Page 743, line 5, insert "any provision of" after "law,".

Page 743, line 8, insert "under that provision of law" after "exclusive authority".

Page 897, beginning on line 21, strike "BACKSTOP".

Page 898, line 2, strike "4202(e)(3)" and insert "paragraph (2) or (3) of section 4202(e)".

Page 898, line 8, insert "transferred under subsection (a)" after "functions".

Page 954, line 2, insert "and shall not apply to the term 'Board' when used in reference to the Federal Deposit Insurance Corporation or the National Credit Union Administration" before the period.

Page 957, line 3, insert "(other than the Consumer Financial Protection Agency)" after "agency".

Page 957, line 20, insert "(and except for any insertion of 'Federal Trade Commission' made by this subtitle)" after "subparagraph (B)".

Page 958, line 2, strike "and 129(m) (as amended by paragraph (7))" and insert "129(m) (as amended by paragraph (7)), 140A, or 149 (as amended by paragraph (8)).".

Page 959, after line 13, insert the following:

(8) SECTION 149.—Section 149(b) of the Truth in Lending Act (15 U.S.C. 1665d(b)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 960, beginning on line 1, strike "paragraph (7)(A)" and insert " paragraphs (7)(B), (8)(A), (8)(C), and (8)(D) of this subsection (and except for any insertion of 'Federal Trade Commission' made by this subtitle)".

Page 961, after line 21, insert the following:

(5) SECTION 609.—Section 609(d)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1)) is amended by inserting "the Federal Trade Commission," after "in consultation with".

Page 961, line 22, strike "(5)" and insert "(6)".

Page 961, line 22, strike "611(e)(2)" and insert "611(e)".

Page 961, line 23, strike "15 U.S.C.1681i(e)(2)" and insert "15 U.S.C. 1681i(e)".

Page 961, line 24, strike "amended to read as follows:" and insert "amended—", and after such line insert the following:

(A) by amending paragraph (2) to read as follows:

Page 962, line 5, strike the period following the quotation marks and insert "; and" and after such line insert the following:

(B) in the heading of paragraph (3) by inserting "CONSUMER REPORTING" before "AGENCY".

Page 962, strike lines 6 through 8 and insert the following:

(7) SECTION 615.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(A) in subsection (d)(2)(B), by inserting “the Federal Trade Commission,” after “in consultation with”;

(B) in subsection (e)(1), by striking “and the Commission” and inserting “the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission”; and

(C) by striking subparagraph (A) of subsection (h)(6) and inserting the following:

Page 962, line 11, strike “(7)” and insert “(8)”.

Page 963, line 2, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 968, after line 7 insert the following:

(C) in paragraph (2) of subsection (c)—

(i) by inserting “the Agency and” before “the Federal Trade Commission” in the first sentence;

(ii) by inserting “Agency and the Federal Trade” after “provide the”; and

(iii) by inserting “Agency,” before “Federal Trade Commission” in the second sentence;

(D) in paragraph (4) of subsection (c)—

(i) by inserting “Agency”, before “the Federal Trade Commission”; and

(ii) inserting “Agency, the Federal Trade” after “complaint of the”;

(E) in paragraph (2) of subsection (f), by inserting “the Federal Trade Commission” after “in consultation with”;

Page 968, line 8, strike “(C)” and insert “(F)”.

Page 968, beginning on line 12, strike “with respect to a covered person described in subsection (b)” and insert “, except that, with respect to sections 615(e) and 628 of this title, the agencies identified in subsections (a) and (b) of this section shall prescribe such regulations as necessary to carry out the purposes of such sections with respect to entities within their enforcement authority under such subsections”.

Page 968, line 14, strike “(D)” and insert “(G)”.

Page 973, strike lines 8 and 9 and insert the following:

(iii) in paragraph (1)(B)—

(I) by inserting “of Governors of the Federal Reserve System” after “Board”; and

(II) by striking “and” after the semicolon;

Page 974, line 2, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 978, line 4, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 982, line 21, strike “and” and after such line insert the following:

(iii) in paragraph (l)(B), by inserting “of Governors of the Federal Reserve System” after “Board”;

Page 982, line 22, strike “(iii)” and insert “(iv)”.

Page 983, line 7, insert “(other than the Consumer Financial Protection Agency)” after “agency”.

Page 988, after line 7, insert the following (and redesignate succeeding subsections accordingly):

(a) SECTION 501.—Section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by inserting "(other than the Consumer Financial Protection Agency)" after "title".

(b) SECTION 502.—Section 502(e)(5) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by inserting "the Consumer Financial Protection Agency," after "(including".

(c) SECTION 503.—Section 503(e)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—

(1) by inserting "Consumer Financial Protection Agency in consultation with the other" before "agencies"; and

(2) by striking "jointly".

Page 988, line 13, strike "and" at the end.

Page 988, line 15, strike the period and insert "; and" and after such line insert the following:

(3) by inserting "the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Federal Trade Commission, and" before "representatives of State insurance authorities".

Page 989, after line 15, insert the following:

(f) SECTION 507.—Subsection 507(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by striking "Federal Trade Commission" and inserting "Consumer Financial Protection Agency, or in the case of a rule under section 501(b), the Federal Trade Commission or the Securities and Exchange Commission".

Page 1019, line 8, strike "and" and after such line insert the following:

(2) by inserting a comma after "under this Act";

(3) by inserting a comma after "subsection (a)(1))"; and

Page 1019, line 9, strike "(2)" and insert "(4)".

Page 1019, line 15, insert "partnership, or corporation" after "person,".

Page 825, after line 12, insert the following:

SEC. 4313. REVIEW, REPORT, AND PROGRAM WITH RESPECT TO EXCHANGE FACILITATORS.

(a) REVIEW.—The Director shall review all Federal laws and regulations relating to the protection of persons who utilize exchange facilitators.

(b) REPORT.—Not later than 180 days after the effective date of this subtitle, the Director shall submit to Congress a report describing—

(1) recommendations for legislation to ensure the appropriate protection of persons who utilize exchange facilitators;

(2) recommendations for updating the regulations of Federal departments and agencies to ensure the appropriate protection of such persons; and

(3) recommendations for Agency regulations to ensure the appropriate protection of such persons.

(c) PROGRAM.—Not later than 180 days after the date of the submission of the report under subsection (b), the Director shall establish and carry out a program, utilizing the authorities of the Agency, to protect persons who utilize exchange facilitators.

(d) EXCHANGE FACILITATOR DEFINED.—In this section, the term "exchange facilitator" means a person that—

(1) facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the ex-

change facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property and transfers a replacement property to the taxpayer as a qualified intermediary (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(4)) or enters into an agreement with the taxpayer to take title to a property as an exchange accommodation titleholder (within the meaning of Revenue Procedure 2000-37) or enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder (within the meaning of Treasury Regulations section 1.1031(k)-1(g)(3));

(2) maintains an office for the purpose of soliciting business as an exchange facilitator; or

(3) purports to be an exchange facilitator by advertising any of the services listed in paragraph (1) or soliciting clients in printed publications, direct mail, television or radio advertisements, telephone calls, facsimile transmissions, or other electronic communications directed to the general public for purposes of providing any such services.

Page 255, after line 2, insert the following new section:

SEC. 1316. DE NOVO BRANCHING INTO STATES.

(a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to read as follows:

"(A) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the national bank were a state bank chartered by such State;".

(b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)(A)(i)) is amended to read as follows:

"(i) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the bank were a State bank chartered by such State;".

Page 277, line 22, strike the period and insert "; and".

Page 277, after line 22, insert the following:

(C) is not an insured depository institution (as defined in section 3(c) of the Federal Deposit Insurance act), a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act), or a government-sponsored enterprise (as such term is defined in section 1004(f) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1811 note)).

Page 305, beginning on line 25, strike "(that became a legally enforceable or perfected security interest after the date of the enactment of this clause) other than a legally enforceable or perfected security interest of the Federal Government," and insert "in assets of the covered financial company arising under a qualified financial contract (as defined under subsection (c)(8)(D)(i)) with an original term of 30 days or less (except that, for a contract for a term linked to a calendar month, the original term must be less than one calendar month), secured by collateral other than securities issued by the United States Treasury, the Board of Governors of the Federal Reserve System, any agency of the United States, any Federal Reserve bank, or any Government Sponsored Enterprise, that became

a legally enforceable or perfected security interest after the date of the enactment of this clause, and that is not a security interest of the Federal Government".

Page 306, beginning on line 7, strike "the amount of up to 20 percent" and insert "in the amount specified under clause (v)".

Page 306, line 13, insert after the period the following sentence: "This clause shall not apply with respect to debt obligations secured by real property. This clause may only be implemented with respect to secured creditors if, as a result of the dissolution of the covered financial company, no funds are available to satisfy, in whole or in part, any claims of unsecured creditors or shareholders.".

Page 306, after line 13, insert the following:

(v) AMOUNT SPECIFIED.—For purposes of clause (iv), the amount specified under this clause, in the case of a secured creditor, is the amount of up to 10 percent.

Page 318, after line 11, insert the following subparagraphs (and redesignate subparagraphs (B) through (E) as subparagraphs (J) through (M), respectively):

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property that—

(i) was made to or for the benefit of a creditor;

(ii) was made for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) was made while the covered financial company was insolvent;

(iv) was made—

(I) on or within 90 days before the date on which the Corporation was appointed receiver; or

(II) between 90 days and one year before the date that the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider, as that term is defined in section 101(31) of title 11, United States Code; and

(v) enables such creditor to receive more than such creditor would receive in the liquidation of the covered financial company if—

(I) the transfer had not been made; and

(II) such creditor received payment of such debt to the extent provided by the provisions of this subtitle.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraphs (A), (B) or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property from—

(i) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii)—

(i) from a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the violability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—A transferee or obligee from whom the Corporation seeks to recover a transfer or avoid an obligation under subparagraphs (A), (B) or (C) shall have the same affirmative defenses and rights to liens on the property transferred to the extent they would be available to a transferee or obligee from whom a trustee under title 11 seeks to recover a transfer under sections 547, 548, and 549 of title 11, United States Code.

(G) LIMITATIONS ON AVOIDING POWERS.—The rights of the Corporation under subparagraphs (A), (B) or (C) are restricted to the same extent as the rights of a trustee in bankruptcy under section 546(b)(1) of the Bankruptcy Code.

(H) PRESUMPTION OF INSOLVENCY.—For purposes of subparagraph (B), the covered financial company is presumed to have been insolvent on and during the 90 days immediately preceding the date on which the Corporation is appointed as receiver.

(I) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver for a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency of a Federal Home Loan Bank) under title 11, United States Code.

Page 31, line 24, strike "control of the Council; and" and insert "control of or used by the Council;".

Page 32, line 5, strike the period and insert "; and" and after such line insert the following:

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the agent's or representative's activities on behalf of the Council) at such reasonable times as the Comptroller General may request.

Page 32, after line 12, insert the following:

(3) COPIES.—Comptroller General may make and retain copies of such books, accounts, and other records access to which is granted under this provision as the Comptroller General considers appropriate.

Page 732, after line 10, insert the following:

SEC. 4111. OVERSIGHT BY GAO.

(a) AUTHORITY.—The Comptroller General may audit the programs, activities, receipts, expenditures, and financial transactions of the Agency and of any agents and representatives of the Agency

as related to the agent's or representative's activities on behalf of or under authority of the Agency.

(b) ACCESS.—Notwithstanding any other provision of law, the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by the Agency, or any vehicles established by the Agency under this Act, and to the directors, officers, employees, independent public accountants, financial advisors, staff, working groups, and agents and representatives of the Agency (as related to the agent's or representative's activities on behalf of the Agency) or any vehicle established by the Agency at such reasonable time as the Comptroller General may request. The Comptroller General may make and retain copies of such books, accounts, and other records as the Comptroller General deems appropriate.

Page 732, line 11, strike "4111" and insert "4112".

Page 1077, line 23, strike "1 year" and insert "18 months".

Page 1079, after line 24, insert the following:

(3) ACCESS.—

(A) IN GENERAL.—For purposes of conducting the study described in paragraph (1), the Comptroller General shall have access, upon request and with the consent of the Securities and Exchange Commission, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by each nationally recognized statistical rating organization, and to the officers, directors, employees, independent public accountants, financial advisors, staff and agents and representatives of the organization (as related to the agent's or representative's activities on behalf of the organization) at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records as the Comptroller General deems appropriate.

(B) CONFIDENTIALITY.—The Comptroller General may not disclose reasonably designated proprietary, trade secret or business confidential information obtained from the organization except that such information shall be disclosed by the Comptroller General—

(i) to other Federal Government departments, agencies, and officials for official use upon request;

(ii) to committees of Congress upon request; and

(iii) to a court in any judicial proceeding under court order.

Nothing in this provision shall be construed to limit the requirements imposed by section 1905 of title 18, United States Code.

Page 1186, beginning on line 8, strike "and the Securities and Exchange Commission shall each" and insert "shall".

Page 1186, line 17, strike "and".

Page 1186, line 20, strike the period and insert a semicolon and after such line insert the following:

(3) determine how to reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is less than $250,000,000 for the relevant reporting period while maintaining investor protections for such companies; and

(4) determine whether various methods of reducing the compliance burden or a complete exemption for such companies (whose market capitalization is less than $250,000,000 for the relevant reporting period) from such compliance would encourage companies to list on exchanges in the United States in their initial public offerings.

Page 1186, beginning on line 21, strike "On or before June 1, 2010" and insert "Not later than 9 months after the date of the enactment of this subtitle".

Page 1186, beginning on line 22, strike "and the Securities and Exchange Commission shall submit separate reports" and insert "shall submit a report".

Page 1222, line 4, strike "and the Comptroller General shall jointly" and insert "shall".

Page 1222, line 15, strike "180 days" and insert "9 months".

Page 1222, beginning on line 16, strike "and the Comptroller General".

Page 706, after line 7, insert the following new paragraph:

(3) OFFICE OF FINANCIAL PROTECTION FOR OLDER AMERICANS.—

(A) ESTABLISHMENT.—Before the end of the 180-day period beginning on the date of the enactment of this title, the Director shall establish within the Agency the Office of Financial Protection for Older Americans, whose functions shall include activities designed to facilitate the financial literacy of individuals who have attained the age of 62 years or more (in this paragraph, referred to as "seniors") on protection from unfair and deceptive practices and on current and future financial choices, including through the dissemination of materials to seniors on such topics.

(B) DIRECTOR.—The Office of Financial Protection for Older Americans shall be headed by a director.

(C) DUTIES.—Such unit shall perform the following duties:

(i) Develop goals for programs that provide seniors financial literacy and counseling, including programs that—

(I) help seniors recognize warning signs of unfair and deceptive practices, protect themselves from such practices;

(II) provide one-on-one financial counseling on issues including long-term savings and later-life economic security; and

(III) provide personal consumer credit advocacy to respond to consumer problems caused by unfair and deceptive practices.

(ii) Monitor certifications or designations of financial advisors who advise seniors and alert the Securities and Exchange Commission and State regulators of cer-

tifications or designations that are identified as unfair or deceptive.

(iii) Not later than 18 months after the date of the establishment of the Office of Financial Protection for Older Americans, submit to Congress and the Securities and Exchange Commission recommendations of the best practices for any legislative and regulatory—

(I) disseminating information regarding the legitimacy of certifications of financial advisers who advise seniors;

(II) methods in which a senior can identify the financial advisor most appropriate for the senior's needs; and

(III) methods in which a senior can verify a financial advisor's credentials.

(iv) Conduct research to identify best practices and effective methods, tools, technology and strategies to educate and counsel seniors about personal finance management with a focus on—

(I) protecting themselves from unfair and deceptive practices;

(II) long-term savings; and

(III) planning for retirement and long-term care.

(v) Coordinate consumer protection efforts of seniors with other Federal agencies and State regulators, as appropriate, to promote consistent, effective, and efficient enforcement.

(vi) Work with community organizations, non-profit organizations, and other entities that are involved with educating or assisting seniors (including the National Education and Resource Center on Women and Retirement Planning).

Page 760, strike line 19 and all that follows through page 762, line 22, and insert the following:

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND SELLERS OF NONFINANCIAL SERVICES.—

(1) IN GENERAL.—Notwithstanding any provision of this title (other than paragraph (4)) and subject to paragraph (2), the Director and the Agency may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to—

(A) credit extended directly by a merchant, retailer, or seller of nonfinancial goods or services to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service, exclusively for the purpose of enabling that consumer to purchase such goods or services directly from the merchant, retailer, or seller of financial services; or

(B) collection of debt, directly by the merchant, retailer, or seller of nonfinancial services, arising from such credit extended. In the application of this paragraph, the extension of credit and the collection of debt described in subparagraphs (A) and (B), respectively, shall not be considered a consumer financial product or service.

(2) EXCEPTIONS FOR EXISTING AUTHORITY.—The Director may exercise any rulemaking authority regarding an extension of credit described in paragraph (1)(A) or the collection of debt arising from such extension, as may be authorized by the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(3) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the authority of the Federal Trade Commission or any agency other than the Agency with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase goods or services directly from the merchant or retailer.

(4) EXCLUSION NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS.—-Paragraph (1) shall not apply to—

(A) any credit transaction, including the collection of the debt arising from such extension, in which the merchant, retailer, or seller of nonfinancial services assigns, sells, or otherwise conveys such debt owed by the consumer to another person; or

(B) any credit transaction—

(i) in which the credit provided significantly exceeds the market value of the product or service provided, and

(ii) with respect to which the Director finds that the sale of the product or service is done as a subterfuge so as to evade or circumvent the provisions of this title.

Page 675, strike line 10 and all that follows through page 676, line 9, and insert the following:

(xi) Financial data processing by any technological means, including providing data processing, access to or use of databases or facilities, or advice regarding processing or archiving, if the data to be processed, furnished, stored, or archived are financial, banking, or economic, except that it shall not be considered a financial activity with respect to financial data processing—

(I) to the extent the person is providing interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230); or

(II) if the person—

(aa) unknowingly or incidentally transmits, processes, or stores financial data in a manner that such data is undifferentiated from other types of data that the person transmits, processes, or stores;

(bb) does not provide to any consumer a consumer financial product or service in connection with or relating to in any manner financial data processing; and

(cc) does not provide a material service to any covered person in connection with the

provision of a consumer financial product or service.

Page 1205, line 2, insert before the period at the end the following: "and to provide additional levels of coverage on an optional basis".

Page 1205, line 22, strike "and" after the semicolon.

Page 1205, line 25, strike the period at the end and insert "; and".

Page 1205, after line 25, insert the following:

(6) examine the feasibility of SIPC providing additional levels of coverage on an optional basis, what those additional levels of coverage should be, and the appropriate risked-based premium for providing additional coverage.

Page 1018, after line 25, insert the following:

SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.

(a) IN GENERAL.—Section 128(e) of the Truth in Lending Act is amended—

(1) by striking paragraph (3) and inserting the following new paragraph (3):

"(3) INSTITUTIONAL CERTIFICATION REQUIRED.—(A) Except as provided in subparagraph (B), before a creditor may issue any funds with respect to an extension of credit described in paragraph (1), the creditor shall obtain from the relevant institution of higher education such institution's certification—

"(i) of the enrollment status of the borrower;

"(ii) of the borrower's cost of attendance at the institution as determined by the institution under part F of title IV of the Higher Education Act of 1965;

"(iii) of the difference between the borrower's cost of attendance and the borrower's estimated financial assistance received under title IV of the Higher Education Act of 1965 and other assistance known to the institution, as applicable; and

"(iv) that the institution has—

"(I) informed the borrower—

"(aa) about the availability of, and the borrower's potential eligibility for, Federal financial assistance under this title, including disclosing the terms, conditions, and interest rates of Federal student loans;

"(bb) of the borrower's ability to select a private educational lender of the borrower's choice;

"(cc) about the impact of a proposed private education loan on the borrowers' potential eligibility for other financial assistance, including Federal financial assistance under the Higher Education Act of 1965; and

"(dd) about a borrower's right to accept or reject a private education loan within the 30-day period following a private educational lender's approval of a borrower's application and about a borrower's 3-day right to cancel altogether;

"(II) determined whether the borrower has applied for and exhausted the Federal financial assistance available to the borrower under the Higher Education

Act of 1965 and informed the borrower accordingly; and

"(III) counseled the borrower on the borrower's financial aid options.

"(B) A creditor may issue funds with respect to an extension of credit described in paragraph (1) without obtaining from the relevant institution of higher education such institution's certification if such institution fails to provide such certification within 21 calendar days or 15 business days, whichever comes first, of the creditor's request for such certification.";

(2) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(3) by inserting after paragraph (8) the following new paragraph (9):

"(9) PROVISION OF INFORMATION.—On or before the date a creditor issues any funds with respect to an extension of credit described in paragraph (1), the creditor shall notify the relevant institution of higher education, in writing, of the amount of the extension of credit and the student on whose behalf credit is extended. The form of such written notification shall be subject to the regulations of the Agency.".

(b) REGULATIONS.—

(1) DEADLINE FOR REGULATIONS.—Not later than 365 days after the date of enactment of this Act, the Agency shall issue regulations in final form to implement paragraphs (3) and (9) of section 128(e) of the Truth in Lending Act, as amended by subsection (a). Such regulations shall become effective not later than 6 months after their date of issuance.

(2) EFFECTIVE DATE.—The regulations in effect pursuant to section 128(e) of the Truth in Lending Act as of the date of the enactment of this Act shall remain in effect until the effective date of the regulations issued under paragraph (1).

(c) STUDY AND REPORT ON PRIVATE EDUCATION LOANS AND PRIVATE EDUCATIONAL LENDERS.—

(1) REPORT.—Not later than 2 years after the date of enactment of this Act, the Director and the Secretary of Education, in consultation with the Commissioners of the Federal Trade Commission, and the Attorney General, shall submit a report to the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Health Education, Labor, and Pensions of the Senate on private education loans (as that term is defined in section 140 of the Truth in Lending Act (15 U.S.C. 1650)) and private educational lenders (as that term is defined in such section).

(2) CONTENT.—The report required by this subsection shall examine, at a minimum, the following:

(A) the growth and changes of the private education loan market in the United States;

(B) factors influencing such growth and changes;

(C) the extent to which students and parents of students rely on private education loans to finance postsecondary education and the private education loan indebtedness of borrowers,

(D) the characteristics of private education loan borrowers, including the types of institutions of higher education they attend, socioeconomic characteristics (including income and education levels, racial characteristics, geographical background, age, and gender), what other forms of financing borrowers use to pay for education, whether they exhaust their federal loan options before taking out a private loan, whether such borrowers are dependent or independent students (as determined under part F of title IV of the Higher Education Act of 1965) or parents of such students, whether such borrowers are students enrolled in a program leading to a certificate, license or credential other than a degree, an associates degree, a baccalaureate degree, or a graduate or professional degree and, if practicable, employment and repayment behaviors;

(E) the characteristics of private educational lenders, including whether such creditors are for-profit, non-profit, or institutions of higher education;

(F) the underwriting criteria used by private educational lenders, including the use of cohort default rate (as such term is defined in section 435(m) of the Higher Education Act of 1965);

(G) the terms, conditions, and pricing of private education loans;

(H) the consumer protections available to private education loan borrowers, including the effectiveness of existing disclosures and requirements and borrowers' awareness and understanding about terms and conditions of various financial products;

(I) whether federal regulators and the public have access to information sufficient to provide them with assurances that private education loans are provided in accord with the Nation's fair lending laws and that allows public officials to determine lenders' compliance with fair lending laws; and

(J) any statutory or legislative recommendations necessary to improve consumer protections for private education loan borrowers and to better enable federal regulators and the public to ascertain private educational lender compliance with fair lending laws.

(d) REPORT.— Not later than 18 months after the issuance of regulations under subsection (b)(1), the Consumer Financial Protection Agency and the Secretary of Education shall jointly submit to Congress a report on the compliance of institutions and private educational lenders with the amendments made by this section. The report shall include the degree to which specific institutions utilize certifications in effectively encouraging the exhaustion of Federal student loan eligibility and lowering student debt.

Page 198, after line 15, insert the following new subtitle:

Subtitle K—Home Affordable Modification Program

SEC. 9911. HOME AFFORDABLE MODIFICATION PROGRAM GUIDELINES.

(a) NET PRESENT VALUE INPUT DATA.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise

the supplemental directives and other guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to require each mortgage servicer participating in such program to provide each borrower under a mortgage whose request for a mortgage modification under the Program is denied with all borrower-related and mortgage-related input data used in any net present value (NPV) analyses performed in connection with the subject mortgage. Such input data shall be provided to the borrower at the time of such denial.

(b) WEB-BASED SITE FOR NPV CALCULATOR AND APPLICATION.—

(1) NPV CALCULATOR.—In carrying out the Home Affordable Modification Program, the Secretary shall establish and maintain a site on the World Wide Web that provides a calculator for net present value analyses of a mortgage, based on the Secretary's methodology for calculating such value, that mortgagors can use to enter information regarding their own mortgages and that provides a determination after entering such information regarding a mortgage of whether such mortgage would be accepted or rejected for modification under the Program, using such methodology.

(2) DISCLOSURE.— Such Web site shall also prominently disclose that each mortgage servicer participating in such Program may use a method for calculating net present value of a mortgage that is different than the method used by such calculator.

(3) APPLICATION.— The Secretary shall make a reasonable effort to include on such World Wide Web site a method for homeowners to apply for a mortgage modification under the Home Affordable Modification Program.

(c) PUBLIC AVAILABILITY OF NPV METHODOLOGY, COMPUTER MODEL, AND VARIABLES.—The Secretary shall make publicly available, including by posting on a World Wide Web site of the Secretary—

(1) the Secretary's methodology and computer model, including all formulae used in such computer model, used for calculating net present value of a mortgage that is used by the calculator established pursuant to subsection (b); and

(2) all variables used in such net present value analysis.

Page 1068, after line 22, insert the following:

(c) REQUIREMENTS FOR LIABILITY.—Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

"(c) REQUIREMENTS FOR LIABILITY.—A purchaser of a security given a rating by a nationally recognized statistical rating organization shall have the right to recover for damages if the process of determining the credit rating was—

"(1) grossly negligent, based on the facts and circumstances at the time the rating was issued; and

"(2) a substantial factor in the economic loss suffered by the investor.

No action shall be maintained to enforce any liability created under this subsection unless brought within 2 years after the discovery of the facts constituting the violation and within 3 years after the initial issuance of the rating.''.

Strike section 1109 and insert the following new section:

SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

(a) IN GENERAL.—Upon the written determination of the Council that a liquidity event exists that could destabilize the financial system (which determination shall be made upon a vote of not less than two-thirds of the members of the Council then serving) and with the written consent of the Secretary of the Treasury (after certification by the President that an emergency exists), the Corporation may create a widely-available program designed to avoid or mitigate adverse effects on systemic economic conditions or financial stability by guaranteeing obligations of solvent insured depository institutions or solvent depository institution holding companies (including any affiliates thereof), if necessary to prevent systemic financial instability during times of severe economic distress, except that a guarantee of obligations under this section may not include provision of equity in any form.

(b) POLICIES AND PROCEDURES.—Prior to exercising any authority under this section, the Corporation shall establish policies and procedures governing the issuance of guarantees. The terms and conditions of any guarantees issued shall be established by the Corporation with the approval of the Secretary of the Treasury and the Financial Stability Oversight Council. Such terms and conditions may include the Corporation requiring collateral as a condition of any such guarantee.

(c) CAP FOR GUARANTEED AMOUNT.—

(1) IN GENERAL.—In connection with any program established pursuant to subsection (a) and subject to paragraph (2), the Corporation may not have guaranteed debt outstanding at any time of more than $500,000,000,000 (as indexed to reflect growth in assets of insured depository institutions and depository institution holding companies as determined by the Corporation).

(2) ADDITIONAL DEBT GUARANTEE AUTHORITY.—If the Corporation, with the concurrence of the Council and the Secretary (in consultation with the President), determines that the Corporation must guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)) to prevent systemic financial instability, the Corporation may transmit to the Congress a request for authority to guarantee debt in excess of $500,000,000,000 (as indexed pursuant to paragraph (1)). Such request shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

(d) FUNDING.—

(1) ADMINISTRATIVE EXPENSES AND COST OF GUARANTEES.—A program established pursuant to this section shall require funding only for the purposes of paying administrative expenses and for paying a guarantee in the event that a guaranteed loan defaults.

(2) FEES AND OTHER CHARGES.—The Corporation shall charge fees or other charges to all participants in such program established pursuant to this section to offset projected losses and administrative expenses. To the extent that a program established pursuant to this section has expenses or losses, the program will be funded entirely through fees or other charges assessed on participants in such program.

(3) EXCESS FUNDS.—If at the conclusion of such program there are any excess funds collected from the fees associated with such program, the funds will be deposited into the Systemic Dissolution Fund established pursuant to section 1609(n).

(4) AUTHORITY OF CORPORATION.—For purposes of conducting a program established pursuant to this section, the Corporation—

(A) may borrow funds from the Secretary of the Treasury, which shall be repaid in full with interest through fees and charges paid by participants in accordance with paragraph (2), and there shall be available to the Corporation amounts in the Treasury not otherwise appropriated, including for the payment of reasonable administrative expenses;

(B) may not borrow funds from the Deposit Insurance Fund established pursuant to section 11(a)(4) of the Federal Deposit Insurance Act; and

(C) may not borrow funds from the Systemic Dissolution Fund established pursuant to section 1609(n).

(5) BACK-UP SPECIAL ASSESSMENT.—To the extent that the funds collected pursuant to paragraph (2) are insufficient to cover any losses or expenses (including monies borrowed pursuant to paragraph (4)) arising from a program established pursuant to this section, the Corporation shall impose a special assessment solely on participants in the program.

(e) PLAN FOR MAINTENANCE OR INCREASE OF LENDING.—In connection with any application or request to participate in such program authorized pursuant to this section, a solvent entity seeking to participate in such program shall be required to submit to the Corporation a plan detailing how the use of such guaranteed funds will facilitate the increase or maintenance of such solvent company's level of lending to consumers or small businesses.

(f) SUNSET OF CORPORATION'S AUTHORITY.—The Corporation's authority under subsections (a) and (d) and the authority to borrow funds from the Treasury under section 1609(o) shall expire on December 31, 2013.

(g) RULE OF CONSTRUCTION.—For purposes of this section, a guarantee of deposits held by insured depository institutions shall not be treated as a debt guarantee program.

(h) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation.

(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(4) SOLVENT.—The term "solvent" means assets are more than the obligations to creditors.

Page 110, after line 7, insert the following new section (and redesignate the subsequent sections accordingly):

SEC. 1110. ADDITIONAL RELATED AMENDMENTS.

(a) FEDERAL DEPOSIT INSURANCE ACT RELATED AMENDMENTS.—

(1) SUSPENSION OF PARALLEL FEDERAL DEPOSIT INSURANCE ACT AUTHORITY.—Effective upon the date of the enactment of this section through December 31, 2013, the Corporation may not exercise its authority under section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to establish any widely-available debt guarantee program for which section 1109 would provide authority.

(2) FEDERAL DEPOSIT INSURANCE ACT AUTHORITY PRESERVED.—Effective December 31, 2013, the Corporation shall have the same authority pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act as the Corporation had prior to the date of enactment of this Act.

(b) EFFECT OF DEFAULT ON AN FDIC GUARANTEE.—If an insured depository institution or depository institution holding company participating in a program under section 1109 or any participant in a debt guarantee program established pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act defaults on any obligation guaranteed by the Corporation after the date of enactment of this Act, the Corporation may—

(1) appoint itself as receiver for the insured depository institution that defaults;

(2) with respect to any other participating company that is not an insured depository institution that defaults—

(A) require consideration of whether a determination shall be made as provided in section 1603 to resolve the company under subtitle G; and

(B) if the Corporation is not appointed receiver pursuant to subtitle G within 30 days of the date of default, require the company to file a petition for bankruptcy under section 301 of title 11, United States Code, or file a petition for bankruptcy against the company under section 303 of title 11, United States Code.

(c) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

"(m) Notwithstanding subsections (a) and (b), an involuntary case may be commenced by the Federal Deposit Insurance Corporation against a depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or other company participating in a guarantee program established by the Corporation on the ground that the company has defaulted on a debt or obligation guaranteed by the Corporation.".

(d) BANKRUPTCY PRIORITY FOR DEFAULTS ON DEBT GUARANTEED PURSUANT TO SECTION 1109.—Section 507(a)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: "and allowed unsecured claims based upon any debt

to the Federal Deposit Insurance Corporation that arose prior to the commencement of the case under this title, as a result of the debtor's default on a guarantee provided by the Corporation pursuant to section 1109 of the Financial Stability Improvement Act of 2009 or the Federal Deposit Insurance Act, under a program established by the Corporation after the date of enactment of the Financial Stability Improvement Act of 2009".

Page 110, line 8, strike "**MUST**" and insert "**MAY**".

Page 110, strike line 10 and all that follows through line 18 and insert the following:

(a) IN GENERAL.—In connection with any payment, credit extension, or guarantee or any commitment under section 1109 or 1604, the Corporation may obtain from the insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company, as the case may be—

Page 110, line 19, strike "financial company" and insert "insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company".

Page 111, line 3, strike "financial company" and insert "insured depository institution, depository institution holding company (including any affiliates thereof), or covered financial company".

Strike section 1614 and insert the following new section:

SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION LIMITATIONS.

At any time that the Corporation has borrowed from the Treasury pursuant to section 1609(o) to resolve a covered financial company, the Corporation shall apply the executive compensation limits under section 111 of the Emergency Economic Stabilization Act of 2008 to such company for so long as such company is in receivership.

Page 436, after line 11, insert the following new section:

SEC. 1615. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT INSURANCE ACT.

Section 11(d)(11)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

(1) by redesignating clauses (iii) through (v) as clauses (iv) through (vi), respectively; and

(2) by inserting after clause (ii) the following new clause (iii):

"(iii) Any obligation of the institution owed to the Corporation as a result of the institution's default on a Corporation-guaranteed debt.".

Page 825, after line 12, insert the following new section:

SEC. 4313. REGULATION OF PERSON-TO-PERSON LENDING.

(a) SCOPE OF EXEMPTION FROM FEDERAL SECURITIES REGULATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following new paragraph:

"(15) PERSON-TO-PERSON LENDING.—

"(A) IN GENERAL.—Any consumer loan, and any note representing a whole or fractional interest in any such loan, funded or sold through a person-to-person lending platform.

"(B) DEFINITIONS.— For purposes of this paragraph:

"(i) CONSUMER LOAN.—The term 'consumer loan' means a loan made to a natural person, the proceeds

of which are intended primarily for personal, family, educational, household, or business use.

"(ii) PERSON-TO-PERSON LENDING PLATFORM.—

"(I) IN GENERAL.—The term 'person-to-person lending platform' means an Internet website, the primary purpose of which is to provide a transaction platform for the funding or sale of individual consumer loans, or the sale of notes representing whole or fractional interests in individual consumer loans, by matching natural persons who wish to obtain such loans with persons who wish to fund them, or by matching persons who wish to sell such loans or notes with persons who wish to purchase them.

"(II) PROHIBITION ON MULTIPLE LOANS IN A SINGLE TRANSACTION.—The term 'person-to-person lending platform' does not include any platform on which multiple loans may be funded or sold in a single transaction, or on which a note representing an interest in multiple loans or other debt obligations may be sold.".

(b) REGULATION BY THE AGENCY.—

(1) IN GENERAL.—Primary jurisdiction for the regulation of the lending activities of person-to-person lending and person-to-person lending platforms is hereby vested in the Agency.

(2) INTERIM REQUIREMENTS.—Until the Director issues and adopts disclosure requirements with respect to the sale of consumer loans, or notes representing whole or fractional interests therein, on person-to-person lending platforms, a person-to-person lending platform that registers the offer and sale of any such notes under the Securities Act of 1933 shall, with respect to such registered offer and sale, provide the disclosure required under the Securities Act of 1933 to be contained in the registration statement and prospectus and provide such disclosure required in any periodic reports required to be filed by such person-to-person lender pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934.

(3) DEFINITIONS.—For purposes of this subsection, the terms "consumer loan", "person-to-person lending platform", "prospectus", and "registration statement" shall have the meaning given such term under the Securities Act of 1933.

(c) RULEMAKING.—The Director may prescribe such regulations and issue such orders as the Director considers necessary or appropriate to implement the provisions of this section and to provide borrower protection, lender protection, consumer choice, and expanded consumer access to fair and reasonable credit choices.

(d) EFFECTIVE DATE.—Notwithstanding section 4310, this section shall take effect on the date of the enactment of this title.

Page 699, line 13, strike "and".

Page 699, line 17, insert "and" after "services;".

Page 699, after line 17, insert the following:

(vi) the nature, range, and size of variations between the credit scores sold to creditors and those sold to consumers by consumer reporting agencies that compile and maintain files on consumers on a nation-

wide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)), and whether such variations disadvantage consumers;

Page 788, after line 10, insert the following:

(3) CONSIDER AS UNFAIR CERTAIN PRACTICES WITH REGARD TO THE PROVISION OF CREDIT SCORES.—Subject to regulations prescribed by the Director, it shall be considered unfair for any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 603(p) of the Fair Credit Reporting Act; 15 U.S.C. 1681a(p)) to make available for purchase by creditors any credit score for a consumer that is not also available for purchase by that consumer at the same price as other credit scores sold to consumers by such agency.

Page 699, line 17, insert ", and the impact of Federal policies, including resource limits in means-tested Federal benefit programs (as defined in section 318 of the Higher Education Act of 1965; 20 U.S.C. 1059e), on such consumers in influencing banking behavior" after "financial products or services".

In section 4109(f) (as modified pursuant to the rule providing for the consideration of the bill and contained in the amendment designated MWB__05), strike paragraph (3) and insert the following:

(3) EXCEPTION.—Notwithstanding paragraph (1), an attorney's activities related to assisting another person in preventing a foreclosure shall be subject to this title except to the extent such activities constitute, or are incidental to, the provision of legal services to a client of the attorney.

Page 776, after line 19, insert the following new subsection:

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order assessments or penalties, over any activities related to the solicitation or making of voluntary contributions to or through a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer or representative of such organizations to the extent the organization, agent, volunteer or representative thereof is soliciting or providing advice, information, education or instruction to donor(s) or potential donor(s) relating to a contribution to or through the organization.

(2) This exclusion shall not apply to other activities not described in the paragraph above and are financial activities as described in any subparagraph of section 4002(19), or otherwise subject to any of the enumerated consumer laws, or the authorities transferred under subtitle F or H.

In the last section title I of the bill (as added pursuant to the rule providing for the consideration of the bill and contained in the amendment designated "TARP__001"), strike "$22,059,000,000," and insert "23,625,000,000".

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SESSIONS, PETE OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 1068, strike lines 8 through 22.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERSON, COLLIN OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Page 481, strike line 8 and all that follows through page 665, line 6, and insert the following:

TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT

SEC. 3001. SHORT TITLE.

This title may be cited as the "Derivative Markets Transparency and Accountability Act of 2009".

SEC. 3002. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) CFTC.—Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap repositories, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to subtitle A, the Commodity Futures Trading Commission shall consult with the Securities and Exchange Commission and the Prudential Regulators.

(2) SEC.—Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap repositories, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult with the Commodity Futures Trading Commission and the Prudential Regulators.

(3) In developing and promulgating rules or orders pursuant to this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall consider each other's views and the views of the Prudential Regulators.

(4) In adopting a rule or order described in paragraph (1) or (2), the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities similarly.

(5) Paragraph (4) shall not be construed to require the Commodity Futures Trading Commission or the Securities Exchange Commission to adopt a rule or order that treats functionally or economically similar products or entities identically.

(b) LIMITATION.—

(1) CFTC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to their activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap repositories;

(iv) persons associated with a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities.

(2) SEC.—Nothing in this title, unless specifically provided, shall be construed to confer jurisdiction on the Securities and Exchange Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to their activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—If either Commission referred to in this section believes that a final rule, regulation, or order of the other such Commission conflicts with subsection (a)(4) or (b), then the complaining Commission may obtain review thereof in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside. Any such proceeding shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the Secretary of the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the rule, regulation, or order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) STANDARD OF REVIEW.—The court, giving deference to the views of neither Commission, shall determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court, as to whether the rule, regulation, or order is in conflict with subsection (a)(4) or (b), as applicable.

(4) JUDICIAL STAY.—The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order, until the date on

which the determination of the court is final (including any appeal of the determination).

(d) DEFINITIONS.—In this section, the terms "Prudential Regulators", "swap", "swap dealer", "major swap participant", "swap repository", "person associated with a swap dealer or major swap participant", "eligible contract participant", "swap execution facility", "security-based swap", "security-based swap dealer", "major security-based swap participant", "security-based swap repository", and "person associated with a security-based swap dealer or major security-based swap participant" shall have the meanings provided, respectively, in the Commodity Exchange Act, including any modification of the meanings under section 3101(b) of this Act.

(e)(1) Notwithstanding subsections (b) and (c), the Commodity Futures Trading Commission and the Securities Exchange Commission shall jointly adopt rules to—

(A) define the terms "security-based swap agreement" in section 3(a)(76) of the Securities Exchange Act of 1934 and "swap" in section 1a(35)(A)(v) of the Commodity Exchange Act;

(B) require the maintenance of records of all activities related to transactions defined in subparagraph (A) that are not cleared; and

(C) make available to the Securities and Exchange Commission information relating to transactions defined in subparagraph (A) that are uncleared.

(2) In the event that the Commodity Futures Trading Commission and the Securities Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) in a timely manner, at the request of either Commission, the Financial Services Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with one of the Commissions regarding the entirety of the matter or by determining a compromise position.

SEC. 3003. INTERNATIONAL HARMONIZATION.

(a) In order to promote effective and consistent global regulation of contracts of sale of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators (as defined in section 1a(42) of the Commodity Exchange Act), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of swaps and security-based swaps, and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery, and may agree to such information-sharing arrangements as may be deemed nec-

essary or appropriate in the public interest for the protection users of contracts of sale of a commodity for future delivery.

SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSISTANCE.

(a) IN GENERAL.—No provision of this title shall be construed to authorize Federal assistance to support clearing operations or liquidation of a derivatives clearing organization described in the Commodity Exchange Act or a clearing agency described in the Securities Exchange Act of 1934, except where explicitly authorized by an Act of Congress.

(b) DEFINITION.—For the purposes of this section, the term "Federal assistance" means the use of public funds for the purposes of—

(1) making loans to, or purchasing any debt obligation of, a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(2) purchasing assets of a derivatives clearing organization, a clearing agency, or a subsidiary of either;

(3) assuming or guaranteeing the obligations of a derivatives clearing organization, a clearing agency, or a subsidiary of either; or

(4) acquiring any type of equity interest or security of a derivatives clearing organization, a clearing agency, or a subsidiary of either.

SEC. 3005. STUDIES.

(a) STUDY ON EFFECTS OF POSITION LIMITS ON TRADING ON EXCHANGES IN THE UNITED STATES.—

(1) STUDY.—The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this titleon excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) REPORT TO THE CONGRESS.—Within 12 months after the imposition of position limits pursuant to the other provisions of this title, the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report,

the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) STUDY ON FEASIBILITY OF REQUIRING USE OF STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) GOALS.—The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by:

(A) commercial users and traders of derivatives;

(B) derivative clearing houses, exchanges and electronic trading platforms;

(C) trade repositories and regulator investigations of market activities; and

(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) INTERNATIONAL COORDINATION.—In conducting the study, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) REPORT.—Within 8 months after the date of the enactment of this Act, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) STUDY OF DESIRABILITY AND FEASIBILITY OF ESTABLISHING SINGLE REGULATOR FOR ALL TRANSACTIONS INVOLVING FINANCIAL DERIVATIVES.—

(1) IN GENERAL.—The Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a joint study of the desirability and feasibility of establishing, by January 1, 2012, a single regulator for all transactions involving financial derivatives.

(2) REPORT TO THE CONGRESS.—Not later than December 1, 2010, Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report that contains the results of the study required by paragraph (1).

SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Prudential Regulators (as defined in section 1a of the Commodity Exchange Act, as amended by section 3111 of this Act) shall transmit to Congress recommendations for legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing non-proprietary swap positions with a swap clearinghouse, including—

(A) customer rights to recover margin deposits or custodial property held at or through an insolvent swap clearinghouse, or clearing participant; and

(B) the enforceability of clearing rules relating to the portability of customer swap positions (and associated margin) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); and

(3) to facilitate the portfolio margining of securities and commodity futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

SEC. 3007. ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may, by rule or order, jointly collect information as may be necessary concerning the markets for any types of swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) and jointly issue a report with respect to any types of swaps or security-based swaps which the Commodity Futures Trading Commission and the Securities and Exchange Commission find are detrimental to the stability of a financial market or of participants in a financial market.

SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN SWAP ACTIVITIES.

If the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may pro-

hibit an entity domiciled in that country from participating in the United States in any swap or security-based swap activities.

SEC. 3009. MEMORANDUM.

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest,

(B) resolving conflicts concerning overlapping jurisdiction between the two agencies, and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after the date of the enactment of this section, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

Subtitle A—Regulation of Swap Markets

SEC. 3101. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) in paragraph (12)(A)—

(A) in clause (vii)(III), by striking "$25,000,000" and inserting "$50,000,000"; and

(B) in clause (xi), by striking "total assets in an amount" and inserting "amounts invested on a discretionary basis";

(2) in paragraph (29)—

(A) in subparagraph (D), by striking "and";

(B) by redesignating subparagraph (E) as subparagraph (G); and

(C) by inserting after subparagraph (D) the following:

"(E) a swap execution facility registered under section 5h;

"(F) a swap repository; and"; and

(3) by adding at the end the following:

"(35) SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

"(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness,

indices, quantitative measures, or other financial or economic interests or property of any kind;

"(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

"(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, and includes any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

"(iv) is, or in the future becomes, commonly known to the trade as a swap;

"(v) meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act of which a material term of which is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

"(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

"(B) EXCLUSIONS.—The term 'swap' does not include—

"(i) any contract of sale of a commodity for future delivery (or any option on such a contract) or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

"(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

"(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq);

"(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of the security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital-raising;

"(ix) any foreign exchange forward;

"(x) any foreign exchange swap;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government or an agency of the United States government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap.

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

"(D) FOREIGN EXCHANGE SWAPS AND FORWARDS EXCEPTION.—

"(i) IN GENERAL.—Notwithstanding clauses (ix) and (x) of subparagraph (B), foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph if the Commission makes a determination that either foreign exchange swaps or foreign exchange forwards or both should be regulated as swaps under this Act and the Secretary concurs with such determination.

"(ii) SCOPE OF AUTHORITY.—

"(I) The Commission and the Secretary shall jointly determine which of the authorities under this Act regarding swaps the Commission shall exercise over foreign exchange swaps and foreign exchange forwards. Such authorities shall subsequently be exercised solely by the Commission. The Commission and the Secretary may jointly amend any previously made determination under this subclause.

"(II) Notwithstanding clause (i), the Commission and the Secretary of the Treasury may determine that either foreign exchange swaps or foreign exchange forwards or both should not be regulated as swaps under this Act if such determination is jointly made.

"(iii) REPORTING.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and subparagraph (D)(ii), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap repository, or, if there is no swap repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

"(iv) SECRETARY.—For purposes of this subparagraph only, the term 'Secretary' means the Secretary of the Treasury.

"(36) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(37) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 3(a)(68) of the Securities and Exchange Act of 1934.

"(38) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person who—

"(i) holds itself out as a dealer in swaps;

"(ii) makes a market in swaps;

"(iii) regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business; or

"(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

"(B) A person may be designated a swap dealer for a single type or single class or category of swap and considered

not a swap dealer for other types, classes, or categories of swaps.

"(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a swap dealer an entity that engages in a de minimus amount of swap dealing in connection with transactions with or on the behalf of its customers.

"(39) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

"(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

"(ii) whose outstanding swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

"(B) DEFINITION OF SUBSTANTIAL NET POSTION.—The Commission shall define by rule or regulation the terms 'substantial net position', 'substantial net counterparty exposure', and 'significant credit losses' at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

"(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.

"(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934.

"(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(42) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

"(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

"(i) a State-chartered bank that is a member of the Federal Reserve System; or

"(ii) a State-chartered branch or agency of a foreign bank;

"(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is—

"(i) a national bank; or

"(ii) a federally chartered branch or agency of a foreign bank; and

"(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System.

"(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934.

"(44) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

"(45) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

"(46) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934.

"(47) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means any partner, officer, director, or branch manager of a swap dealer or major swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a swap dealer or major swap participant, or any employee of a swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of the term other than for purposes of section 4s(b)(6).

"(48) SWAP REPOSITORY.—The term 'swap repository' means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in or the terms and conditions of swaps entered into by third parties.

"(49) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a person or entity that facilitates the execution or trading of swaps between two persons through any means of interstate commerce, but which is not a designated contract market, including any electronic trade execution or voice brokerage facility.

"(50) DERIVATIVE.—The term 'derivative' means—

"(A) a contract of sale of a commodity for future delivery; or

"(B) a swap.".

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Commodity Futures Trading Commission shall adopt a rule further defining the terms "swap", "swap dealer", "major swap participant", and "eligible contract participant" for the purpose of including transactions and entities that have been structured to evade this title.

(c) EXEMPTIONS.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 4(c)) is amended by adding at the end the following: "The Commission shall not have the authority to grant exemptions from the provisions of sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109, 3110, 3113, 3115, 3120, and 3121 of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act. Notwithstanding the preceding sentence, the Commodity Futures Trading Commission may exempt from any provision of the Commodity Exchange Act, pursuant to this subsection, an agreement, contract, or transaction that is entered into pursuant to a tariff approved by the Federal Energy Regulatory Commission, if the Commodity Futures Trading Commission determines that the exemption would be consistent with the public interest, and shall consider and not unreasonably deny any request made by the Federal Energy Regulatory Commission for such an exemption.".

SEC. 3102. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended—

(1) in the 1st sentence of subparagraph (A)—

(A) by striking "(c) through (i)" and inserting "(c) and (f)";

(B) by inserting "swaps, or" before "contracts of sale";

(C) by striking "derivatives transaction execution facility" and inserting "swap execution facility"; and

(D) by striking "5a" and inserting "5h"; and

(2) by adding at the end the following:

"(G)(i) Nothing in this paragraph shall limit the jurisdiction conferred on the Securities and Exchange Commission by the Derivative Markets Transparency and Accountability Act of 2009 with regard to security-based swap agreements as defined pursuant to section 3002(e) of such Act, and security-based swaps.

"(ii) In addition to the authority of the Securities Exchange Commission described in clause (i), nothing in this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).

"(H)(i) Nothing in this Act shall limit or affect any statutory authority of the Federal Energy Regulatory Commission with respect to an agreement, contract, or transaction that is—

"(I) not executed, traded, or cleared on a registered entity or trading facility; and

"(II) entered into pursuant to a tariff or rate schedule approved by the Federal Energy Regulatory Commission.

"(ii) In addition to the authority of the Federal Energy Regulatory Commission described in clause (i), nothing in

this subparagraph shall limit or affect any statutory authority of the Commission with respect to an agreement, contract, or transaction described in clause (i).".

(b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i) by striking "or" at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

"(ii) a swap; or".

(c) Section 12(e) of such Act (7 U.S.C. 16(e)) is amended—

(1) in paragraph (1)(B), by inserting "or (3)" after "paragraph (2)";

(2) in paragraph (2), by striking subparagraphs (A) and (B) and inserting the following:

"(A) a swap; and

"(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c) or 2(f) of this Act or title IV of the Commodity Futures Modernization Act of 2000 or exempted under section 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act)."; and

(3) by adding at the end the following:

"(3) A swap may not be regulated as an insurance contract under State law.

"(4) The provisions of this Act relating to swaps that were enacted by the Derivative Markets Transparency and Accountability Act of 2009, including any rule or regulation thereunder, shall not apply to activities outside the United States unless those activities—

"(A) have a direct and significant connection with activities in or effect on United States commerce; or

"(B) contravene such rules or regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Derivative Markets Transparency and Accountability Act of 2009.".

(d) Nothing in the Derivative Markets Transparency and Accountability Act of 2009 or the amendments to the Commodity Exchange Act made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to Section 222 of the Federal Power Act and Section 4A of the Natural Gas Act that existed prior to the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.

(a) CLEARING AND EXECUTION TRANSPARENCY REQUIREMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by striking subsections (d), (e), (g), and (h).

(2)(A) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act.

(B) The Commodity Futures Trading Commission shall consider any petition submitted under subparagraph (A) in a prompt manner and may allow a person to continue operating

subject to paragraphs (3) through (7) of section 2(h) of the Commodity Exchange Act for up to one year after the effective date of this subtitle.

(3) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

"(d) SWAPS.—Nothing in this Act (other than subsections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j), and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants) governs or applies to a swap.

"(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.".

(4) Section 2 of such Act (7 U.S.C. 2) is further amended by inserting after subsection (i) the following:

"(j) CLEARING REQUIREMENT.—

"(1) IN GENERAL.—

"(A) STANDARD FOR CLEARING.—A swap shall be submitted for clearing if a derivatives clearing organization that is registered under this Act will accept the swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) that the swap is required to be cleared.

"(B) OPEN ACCESS.—The rules of a derivatives clearing organization described in subparagraph (A) shall—

"(i) prescribe that all swaps submitted to the derivatives clearing organization with the same terms and conditions are economically equivalent within the derivatives clearing organization and may be offset with each other within the derivatives clearing organization; and

"(ii) provide for non-discriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility.

"(2) COMMISSION REVIEW.—

"(A) COMMISSION-INITIATED REVIEW.—

"(i) The Commission shall review each swap, or any group, category, type or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared.

"(ii) The Commission shall provide at least a 30-day public comment period regarding any determination made under clause (i).

"(B) SWAP SUBMISSIONS.—

"(i) A derivatives clearing organization shall submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members (in a manner to be determined by the Commission) of the submission.

"(ii) The Commission shall—

"(I) make available to the public any submission received under clause (i);

"(II) review each submission made under clause (i), and determine whether the swap, or group, category, type, or class of swaps described in the submission is required to be cleared; and

"(III) provide at least a 30-day public comment period regarding its determination as to whether the clearing requirement under paragraph (1)(A) shall apply to the submission.

"(C) DEADLINE.—The Commission shall make its determination under subparagraph (B)(ii) not later than 90 days after receiving a submission made under subparagraph (B)(i), unless the submitting derivatives clearing organization agrees to an extension for the time limitation established under this subparagraph.

"(D) DETERMINATION.—

"(i) In reviewing a submission made under subparagraph (B), the Commission shall review whether the submission is consistent with section 5b(c)(2),

"(ii) In reviewing a swap, group of swaps, or class of swaps pursuant to subparagraph (A) or a submission made under subparagraph (B), the Commission shall take into account the following factors:

"(I) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

"(II) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(III) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract.

"(IV) The effect on competition, including appropriate fees and charges applied to clearing.

"(V) The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or 1 or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

"(iii) In making a determination under subparagraph (B)(ii) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(E) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission

for review, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that it seeks to accept for clearing.

"(3) STAY OF CLEARING REQUIREMENT.—

"(A) After a determination pursuant to paragraph (2)(B), the Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type or class of swaps) and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A), the Commission may—

"(i) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type or class of swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with paragraph (2)(D); or

"(ii) determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type or class of swaps.

"(D) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a derivatives clearing organization's clearing of a swap, or a group, category, type or class of swaps, that it has accepted for clearing.

"(4) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this subsection.

"(5) REQUIRED REPORTING.—

"(A) IN GENERAL.—All swaps that are not accepted for clearing by any derivatives clearing organization shall be reported either to a swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe. Counterparties to a swap may agree which counterparty will report the swap as required by this paragraph.

"(B) SWAP DEALER DESIGNATION.—With regard to swaps where only 1 counterparty is a swap dealer, the swap dealer shall report the swap as required by this paragraph.

"(6) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission no later than 180 days after the effective date of this subsection; and

"(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission no later than the later of—

"(i) 90 days after such effective date; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(7) CLEARING TRANSITION RULES.—

"(A) Swaps entered into before the date of the enactment of this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(A).

"(B) Swaps entered into before application of the clearing requirement pursuant to this subsection are exempt from the clearing requirements of this subsection if reported pursuant to paragraph (6)(B).

"(8) EXCEPTIONS.—

"(A) IN GENERAL.—The requirements of paragraph (1) shall not apply to a swap if one of the counterparties to the swap—

"(i) is not a swap dealer or major swap participant;

"(ii) is using swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

"(iii) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into noncleared swaps.

"(B) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in subparagraph (A) by swap dealers and major swap participants.

"(C) OPTION TO CLEAR.—The application of the clearing exception in subparagraph (A) is solely at the discretion of the counterparty to the swap that meets the conditions of clauses (i) through (iii) of subparagraph (A).

"(k) EXECUTION TRANSPARENCY.—

"(1) REQUIREMENT.—A swap that is subject to the clearing requirement of subsection (j) shall not be traded except on or through a board of trade designated as a contract market under section 5, or on or through a swap execution facility registered under section 5h, that makes the swap available for trading.

"(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a swap if no designated contract market or swap execution facility makes the swap available for trading.

"(3) AGRICULTURAL SWAPS.—No person shall offer to enter into, enter into or confirm the execution of, any swap in an agricultural commodity (as defined by the Commission) that is subject to paragraphs (1) and (2) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

"(4) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no facility that makes the swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements that may be prescribed by the Commission with respect to swaps subject to the requirements of paragraph (1).

"(5) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on boards of trade designated as contract markets under section 5 of contracts, agreements, or transactions that would be security-based swaps but for the trading of such contracts, agreements or transactions on such a designated contract market.".

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) Subsections (a) and (b) of section 5b of such Act (7 U.S.C. 7a-1) are amended to read as follows:

"(a) REGISTRATION REQUIREMENT.—

"(1) IN GENERAL.—It shall be unlawful for any entity, 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 derivatives clearing organization described in section 1a(10) of this Act with respect to—

"(A) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

"(i) excluded from this Act by section 2(a)(1)(C)(i), 2(c), or 2(f); or

"(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(B) a swap.

"(2) EXISTING BANKS AND CLEARING AGENCIES.—A bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that the bank cleared swaps, as defined in this Act, as a multilateral clearing organization or the clearing agency cleared swaps, as defined in this Act, before the enactment of this subsection. A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.

"(b) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.".

(2) Section 5b of such Act (7 U.S.C. 7a-1) is amended by adding at the end the following:

"(g) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability

Act of 2009, the Commission shall adopt rules governing persons that are registered as derivatives clearing organizations for swaps under this subsection.

"(h) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that the derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

"(2) A person that is required to be registered as a derivatives clearing organization under this section, whose principal business is clearing securities and options on securities and which is a clearing agency registered with the Securities Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing swaps, unless the Commission finds that the clearing agency is not subject to comparable, comprehensive supervision and regulation by the Securities and Exchange Commission.

"(i) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer—

"(A) shall report directly to the board or to the senior officer of the derivatives clearing organization; and

"(B) shall—

"(i) review compliance with the core principles in section 5b(c)(2).

"(ii) in consultation with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, resolve any conflicts of interest that may arise;

"(iii) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(iv) ensure compliance with this Act and the rules and regulations issued under this Act; and

"(C) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. The procedures shall establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

"(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the derivatives clearing organization, including the code of ethics and conflict of interest policies of the derivatives clearing organization, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the derivatives clear-

ing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.".

(3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-1(c)(2)) is amended to read as follows:

"(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

"(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles specified in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which the organization complies with the core principles.

"(B) FINANCIAL RESOURCES.—

"(i) The derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge the responsibilities of the organization.

"(ii) The financial resources of the derivatives clearing organization shall at a minimum exceed the total amount that would—

"(I) enable the organization to meet the financial obligations of the organization to the members of, and participants in, the organization, notwithstanding a default by the member or participant creating the largest financial exposure for the organization in extreme but plausible market conditions; and

"(II) enable the organization to cover the operating costs of the organization for a period of 1 year, calculated on a rolling basis.

"(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

"(i) The derivatives clearing organization shall establish—

"(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the organization) for members of and participants in the organization; and

"(II) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the organization for clearing.

"(ii) The derivatives clearing organization shall have procedures in place to verify that participation and membership requirements are met on an ongoing basis.

"(iii) The participation and membership requirements of the derivatives clearing organization shall be

objective, publicly disclosed, and permit fair and open access.

"(D) RISK MANAGEMENT.—

"(i) The derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

"(ii) The derivatives clearing organization shall measure the credit exposures of the organization to the members of, and participants in, the organization at least once each business day and shall monitor the exposures throughout the business day.

"(iii) Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit the exposures of the organization to potential losses from defaults by the members of, and participants in, the organization so that the operations of the organization would not be disrupted and non-defaulting members or participants would not be exposed to losses that they cannot anticipate or control.

"(iv) Margin required from all members and participants shall be sufficient to cover potential exposures in normal market conditions.

"(v) The models and parameters used in setting margin requirements shall be risk-based and reviewed regularly.

"(E) SETTLEMENT PROCEDURES.—The derivatives clearing organization shall—

"(i) complete money settlements on a timely basis, and not less than once each business day;

"(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

"(iii) ensure money settlements are final when effected;

"(iv) maintain an accurate record of the flow of funds associated with each money settlement;

"(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations; and

"(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries, including how risks from these obligations shall be identified and managed.

"(F) TREATMENT OF FUNDS.—

"(i) The derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

"(ii) The derivatives clearing organization shall hold member and participant funds and assets in a manner

whereby risk of loss or of delay in the access of the organization to the assets and funds is minimized.

"(iii) Assets and funds invested by the derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

"(G) DEFAULT RULES AND PROCEDURES.—

"(i) The derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the organization.

"(ii) The default procedures of the derivatives clearing organization shall be clearly stated, and they shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting the obligations of the organization.

"(iii) The default procedures shall be publicly available.

"(H) RULE ENFORCEMENT.—The derivatives clearing organization shall—

"(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the organization and for resolution of disputes; and

"(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of rules of the organization.

"(I) SYSTEM SAFEGUARDS.—The derivatives clearing organization shall—

"(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and

"(iii) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

"(J) REPORTING.—The derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

"(K) RECORDKEEPING.—The derivatives clearing organization shall maintain records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

"(L) PUBLIC INFORMATION.—

"(i) The derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

"(ii) The derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

"(iii) The derivatives clearing organization shall disclose publicly and to the Commission information concerning—

"(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

"(II) clearing and other fees that the organization charges the members of, and participants in, the organization;

"(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

"(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

"(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

"(M) INFORMATION-SHARING.—The derivatives clearing organization shall—

"(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

"(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

"(N) ANTITRUST CONSIDERATIONS.—The derivatives clearing organization shall avoid—

"(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

"(ii) imposing any material anticompetitive burden.

"(O) GOVERNANCE FITNESS STANDARDS.—

"(i) The derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of the owners of, and participants in, the organization.

"(ii) The derivatives clearing organization shall establish and enforce appropriate fitness standards for the directors, members of any disciplinary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this subparagraph.

"(P) CONFLICTS OF INTEREST.—The derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving the conflicts of interest.

"(Q) COMPOSITION OF THE BOARDS.—The derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.

"(R) LEGAL RISK.—The derivatives clearing organization shall have a well founded, transparent, and enforceable legal framework for each aspect of its activities.".

(4) Section 5b of such Act (7 U.S.C. 7a-1) is further amended by adding after subsection (i), as added by this section, the following:

"(j) REPORTING.—

"(1) IN GENERAL.—A derivatives clearing organization that clears swaps shall provide to the Commission all information determined by the Commission to be necessary to perform the responsibilities of the Commission under this Act. The Commission shall adopt data collection and maintenance requirements for swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for swaps accepted by swap repositories and swaps traded on swap execution facilities. The Commission shall share the information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries that comply with the provisions of section 8.

"(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).

"(3) A derivatives clearing organization shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.".

(5) Section 8(e) of such Act (7 U.S.C. 12(e)) is amended in the last sentence by inserting "central bank and ministries" after "department" each place it appears.

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsection (b) or (c)—

"(1) the Commodity Exchange Act shall not apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority under such Act with respect to, an identified banking product; and

"(2) the definitions of 'security-based swap' in section 3(a)(68) of the Securities Exchange Act of 1934 and 'security-based swap agreement' in section 3(a)(76) of the Securities Exchange Act of 1934 do not include any identified banking product.

"(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product of a bank under its regulatory jurisdiction from the exclusions in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

"(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

"(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(c) EXCEPTION.—The exclusions in subsection (a) shall not apply to an identified banking product that—

"(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

"(2) meets the definition of swap in section 1a(35) of the Commodity Exchange Act or security-based swap in section 3(a)(68) of the Securities and Exchange Act of 1934; and

"(3) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

Section 8 of the Commodity Exchange Act (7 U.S.C. 12) is amended by adding at the end the following:

"(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) derivatives clearing organizations pursuant to section 5b(j)(2);

"(B) swap repositories pursuant to section 21(c)(3); and

"(C) reports received by the Commission pursuant to section 4r.".

SEC. 3105. SWAP REPOSITORIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

"SEC. 21. SWAP 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 repository.

"(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

"(b) STANDARD SETTING.—

"(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

"(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

"(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

"(c) DUTIES.—A swap repository shall—

"(1) accept data prescribed by the Commission for each swap under subsection (b);

"(2) maintain the data in such form and manner and for such period as may be required by the Commission;

"(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

"(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(d) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

"(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that the swap repository is subject to comparable, comprehensive supervision and regulation on a con-

solidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.".

SEC. 3106. REPORTING AND RECORDKEEPING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

"SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

"(a) IN GENERAL.—Any person who enters into a swap and—

"(1) did not have the swap cleared in accordance with section 2(j)(1); and

"(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21,

shall meet the requirements in subsection (b).

"(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

"(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.".

SEC. 3107. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 3106) the following:

"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) 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) 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.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. The person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to the person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c), (d) and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants. Except with regard to subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for swap dealers and major swap participants.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

"(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap dealer or major swap participant, if the swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

"(c) RULES.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Commission shall adopt rules for persons that are registered as swap dealers or major swap participants under this section.

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on swap dealers or major swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(d) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that:

"(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

"(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

"(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

"(i) help ensure the safety and soundness of the swap dealer or major swap participant; and

"(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

"(2) RULES.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants, with respect to their activities as a swap dealer or major swap participant for which there is a Prudential Regulator

"(B) NON-BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for swap dealers and major swap participants for which there is no Prudential Regulator.

"(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a registered futures commission merchant or introducing broker in accordance with section 4f.

"(e) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of the person;

"(B) for which—

"(i) there is a Prudential Regulator, shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(ii) there is no Prudential Regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(C) shall keep the books and records open to inspection and examination by any representative of the Commissionl and

"(D) shall keep any such books and records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

"(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for swap dealers and major swap participants.

"(f) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall maintain daily trading records of its swaps and all related records (including related cash or forward transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

"(4) AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for swap dealers and major swap participants.

"(g) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

"(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

"(B) diligent supervision of its business as a swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

"(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer or major swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) for cleared swaps, upon the request of the counterparty, the daily mark from the appropriate derivatives clearing organization, and for non-cleared swaps, upon request of the counterparty, the daily mark of the swap dealer or major swap participant; and

"(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap; and

"(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act.

"(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for swap dealers and major swap participants no later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009.

"(h) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

"(2) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing the standards described in paragraph (1) for swap dealers and major swap participants.

"(i) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant at all times shall comply with the following requirements:

"(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its trading in swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, information concerning—

"(A) terms and conditions of its swaps;

"(B) swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to swaps; and

"(D) other information relevant to its trading in swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission or to the Prudential Regulator for the swap dealer or major swap participant, as applicable, upon request.

"(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—The swap dealer or major swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.".

SEC. 3108. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

"(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict-of-interest systems and procedures that—

"(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(2) address such other issues as the Commission determines appropriate.".

SEC. 3109. SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

"SEC. 5h. SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—A person may not operate a swap execution facility unless the facility is registered under this section or is registered with the Commission as a designated contract market under section 5 or a swap execution facility under section 5.

"(b) REQUIREMENTS FOR TRADING.—

"(1) A swap execution facility that is registered under subsection (a) may make available for trading any swap.

"(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a swap to be traded through the facilities of a designated contract market or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a swap, notwithstanding section 2(k), if the swap is executed, reported, recorded, or confirmed in accordance with the rules of the designated contract market or swap execution facility.

"(3) AGRICULTURAL SWAPS.—A swap execution facility may not list for trading or confirm the execution of any swap in an agricultural commodity (as defined by the Commission) except pursuant to a rule or regulation of the Commission allowing the swap under such terms and conditions as the Commission shall prescribe.

"(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade

also operates a swap execution facility and uses the same electronic trade execution system for trading on the contract market and the swap execution facility, identify whether the electronic trading is taking place on the contract market or the swap execution facility.

"(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

"(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

"(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

"(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility; and

"(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether rule violations have occurred.

"(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.— The swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—The swap execution facility shall—

"(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

"(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery

month, a swap execution facility that is a trading facility shall adopt for each of its contracts made available for trading on the trading facility, where necessary and appropriate, position limitations or position accountability for speculators who establish positions in the contract.

"(B) For any contract of a swap execution facility that is subject to a position limitation established by the Commission pursuant to section 4a(a), the swap execution facility—

"(i) may set a position limitation at a level that is lower than the Commission limitation; and

"(ii) shall monitor positions established on or through the swap execution facility for compliance with the limit set by the Commission and the limit, if any, set by the swap execution facility.

"(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

"(8) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to liquidate or transfer open positions in any swap or to suspend or curtail trading in a swap.

"(9) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

"(10) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The swap execution facility shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

"(11) ANTITRUST CONSIDERATIONS.—The swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(12) CONFLICTS OF INTEREST.—The swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving the conflicts of interest.

"(13) FINANCIAL RESOURCES.—

"(A) The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

"(B) The financial resources of the swap execution facility shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(14) SYSTEM SAFEGUARDS.—The swap execution facility shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and

"(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

"(15) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer—

"(i) shall report directly to the board or to the senior officer of the facility;

"(ii) shall—

"(I) review compliance with the core principles in this subsection;

"(II) in consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

"(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(IV) ensure compliance with this Act and the rules and regulations issued under this Act, including rules prescribed by the Commission pursuant to this section; and

"(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints, and for the handling, management response, remediation, re-testing, and closing of non-compliant issues.

"(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with this Act and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. The compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country.

"(f) RULES.—No later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.".

SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 1 et seq.) are repealed.

(b)(1) Prior to the final effective dates in this title, a person may petition the Commodity Futures Trading Commission to remain subject to the provisions of section 5d of the Commodity Exchange Act, as such provisions existed prior to the effective date of this subtitle.

(2) The Commodity Futures Trading Commission shall consider any petition submitted under paragraph (1) in a prompt manner and may allow a person to continue operating subject to the provisions of section 5d of the Commodity Exchange Act for up to 1 year after the effective date of this subtitle.

SEC. 3111. DESIGNATED CONTRACT MARKETS.

(a) Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) IN GENERAL.—To be designated as, and to maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

"(2) COMPLIANCE WITH RULES.—

"(A) The board of trade shall monitor and enforce compliance with the rules of the contract market, including access requirements, the terms and conditions of any contracts to be traded on the contract market and the contract market's abusive trade practice prohibitions.

"(B) The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to, any person or entity that violates the rules.

"(C) The rules shall provide the board of trade with the ability and authority to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.".

(b) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraphs (4) and (5) and inserting the following:

"(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

"(A) To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

"(B) For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board of trade shall set its position limitation at a level no higher than the Commission-established limitation.".

(c) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (7) and inserting the following:

"(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

"(A) the terms and conditions of the contracts of the contract market; and

"(B) the rules, regulations and mechanisms for executing transactions on or through the facilities of the contract market, and the rules and specifications describing the operation of the board of trade's electronic matching platform or other trade execution facility.".

(d) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by striking paragraph (9) and inserting the following:

"(9) EXECUTION OF TRANSACTIONS.—

"(A) The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.

"(B) The rules may authorize, for bona fide business purposes—

"(i) transfer trades or office trades;

"(ii) an exchange of—

"(I) futures in connection with a cash commodity transaction;

"(II) futures for cash commodities; or

"(III) futures for swaps; or

"(iii) A futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.".

(e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17)) is amended by adding at the end the following: "The board of trade shall keep any such records relating to swaps defined in section 1a(35)(A)(v) open to inspection and examination by the Securities and Exchange Commission.".

(f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

"(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the financial resources of a board of trade to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(20) SYSTEM SAFEGUARDS.—The board of trade shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade's responsibilities and obligations; and

"(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

"(21) DIVERSITY OF BOARDS OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

"(22) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or

market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.".

(g) Section 5 of such Act (7 U.S.C. 7) is amended by striking subsection (b).

SEC. 3112. MARGIN.

(a) Section 8a(7)(C) of the Commodity Exchange Act (7 U.S.C. 12a(7)(C)) is amended by striking ", excepting the setting of levels of margin".

(b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is amended by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively, and inserting after subparagraph (C) the following:

"(D) margin requirements, provided that such rules, regulations, or orders shall—

"(i) be limited to protecting the financial integrity of the derivatives clearing organization;

"(ii) be designed for risk management purposes in order to protect the financial integrity of transactions; and

"(iii) not set specific margin amounts.".

SEC. 3113. POSITION LIMITS.

(a) Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended by—

(1) inserting "(1)" after "(a)";

(2) striking "on electronic trading facilities with respect to a significant price discovery contract" in the first sentence and inserting "swaps that perform or affect a significant price discovery function with respect to registered entities";

(3) inserting ", including any group or class of traders," in the second sentence after "held by any person";

(4) striking "on an electronic trading facility with respect to a significant price discovery contract," in the second sentence and inserting "swaps that perform or affect a significant price discovery function with respect to registered entities,"; and

(5) inserting at the end the following:

"(2)(A) In accordance with the standards set forth in paragraph (1) of this subsection and consistent with the good faith exception cited in subsection (b)(2), with respect to physical commodities other than excluded commodities as defined by the Commission, the Commission shall by rule, regulation, or order establish limits on the amount of positions, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery or with respect to options on the contracts or commodities traded on or subject to the rules of a designated contract market.

"(B)(i) For exempt commodities, the limits shall be established within 180 days after the date of the enactment of this paragraph.

"(ii) For agricultural commodities, the limits shall be established within 270 days after the date of the enactment of this paragraph.

"(C) In establishing the limits, the Commission shall strive to ensure that trading on foreign boards of trade in the same commodity will be subject to comparable limits and that any limits to be imposed by the Commission will not cause price discovery in the commodity to shift to trading on the foreign boards of trade.

"(3) In establishing the limits required in paragraph (2), the Commission, as appropriate, shall set limits—

"(A) on the number of positions that may be held by any person for the spot month, each other month, and the aggregate number of positions that may be held by any person for all months; and

"(B) to the maximum extent practicable, in its discretion—

"(i) to diminish, eliminate, or prevent excessive speculation as described under this section;

"(ii) to deter and prevent market manipulation, squeezes, and corners;

"(iii) to ensure sufficient market liquidity for bona fide hedgers; and

"(iv) to ensure that the price discovery function of the underlying market is not disrupted.

"(4)(A) Not later than 150 days after the establishment of position limits pursuant to paragraph (2), and biannually thereafter, the Commission shall hold 2 public hearings, 1 for agriculture commodities and 1 for energy commodities as such terms are defined by the Commission, in order to receive recommendations regarding the position limits to be established in paragraph (2).

"(B) Each public hearing held pursuant to subparagraph (A) shall, at a minimum providing there is sufficient interest, receive recommendations from—

"(i) 7 predominantly commercial short hedgers of the actual physical commodity for future delivery;

"(ii) 7 predominantly commercial long hedgers of the actual physical commodity for future delivery;

"(iii) 4 non-commercial participants in markets for commodities for future delivery; and

"(iv) each designated contract market upon which a contract in the commodity for future delivery is traded.

"(C) Within 60 days after each public hearing held pursuant to subparagraph (A), the Commission shall publish in the Federal Register its response to the recommendations regarding position limits heard at the hearing.

"(5) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate:

"(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position;

"(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis;

"(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap;

"(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market; and

"(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a swap serves a significant price discovery function with respect to a regulated market.

"(6) ECONOMICALLY EQUIVALENT CONTRACTS.—

"(A) Notwithstanding any other provision of this section, the Commission shall establish limits on the amount of positions, including aggregate position limits, as appropriate, other than bona fide hedge positions, that may be held by any person with respect to swaps that are economically equivalent to contracts of sale for future delivery or to options on the contracts or commodities traded on or subject to the rules of a designated contract market subject to paragraph (2).

"(B) In establishing limits pursuant to subparagraph (A), the Commission shall—

"(i) develop the limits concurrently with limits established under paragraph (2), and the limits shall have similar requirements as under paragraph (3)(B); and

"(ii) establish the limits simultaneously with limits established under paragraph (2).

"(7) AGGREGATE POSITION LIMITS.—The Commission shall, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

"(A) contracts listed by designated contract markets;

"(B) with respect to an agreement contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

"(C) swap contracts that perform or affect a significant price discovery function with respect to regulated entities.

"(8) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.".

(b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or swap execution facility or facilities"; and

(2) in paragraph (2), by striking "or derivatives transaction execution facility or facilities or electronic trading facility" and inserting "or swap execution facility".

(c) Section 4a(c) of such Act is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding after and below the end the following:

"(2) For the purposes of implementation of subsection (a)(2) for contracts of sale for future delivery or options on the contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

"(A)(i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

"(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

"(iii) arises from the potential change in the value of—

"(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

"(II) liabilities that a person owns or anticipates incurring; or

"(III) services that a person provides, purchases, or anticipates providing or purchasing; or

"(B) reduces risks attendant to a position resulting from a swap that—

"(i) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to subparagraph (A); or

"(ii) meets the requirements of subparagraph (A).".

(d) This section shall become effective on the date of its enactment.

SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a-2(a)) is amended—

(1) in paragraph (1), by striking "5a(d) and 5b(c)(2)" and inserting "5b(c)(2) and 5h(e)"; and

(2) in paragraph (2), by striking "shall not" and inserting "may".

(b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is amended in each of paragraphs (1), (2), and (3) by inserting "or swap execution facility" after "contract market" each place it appears.

(c) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1)) is amended—

(1) by inserting "(A)" after "IN GENERAL.—"; and

(2) by adding at the end the following:

"(B) The new rule or rule amendment shall become effective, pursuant to the registered entity's certification and notice of such certification to its members (in a manner to be determined by the Commission), 10 business days after the Commission's receipt of the certification (or such shorter period determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

"(C)(i) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of the notification.

"(ii) The Commission shall provide at least a 30-day public comment period, within the 90-day period in which the stay is in effect described in clause (i), whenever it reviews a rule or rule amendment pursuant to a notification by the Commission under this paragraph.".

(d) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is repealed.

SEC. 3115. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:

"(e) FOREIGN BOARDS OF TRADE.—

"(1) IN GENERAL.—The Commission may not permit a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

"(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable, taking into consideration the relative sizes of the respective markets, to the position limits (including related hedge exemption

provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(I) the information that the foreign board of trade will make publicly available;

"(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to the reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

"(2) EXISTING FOREIGN BOARDS OF TRADE.—Paragraph (1) shall not be effective with respect to any foreign board of trade to which the Commission has granted direct access permission before the date of the enactment of this subsection until the date that is 180 days after such date of enactment.

"(3) PERSONS LOCATED IN THE UNITED STATES.—".

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of such Act (7. U.S.C. 6(a)) is amended by inserting "or by subsection (f)" after "Unless exempted by the Commission pursuant to subsection (c)"; and

(2) Section 4 of such Act (7 U.S.C 6) is further amended by adding at the end the following:

"(f)(1) A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person—

"(A) has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that is—

"(i) legally organized under the laws of a foreign country;

"(ii) authorized to act as a board of trade by a foreign futures authority; and

"(iii) subject to regulation by the foreign futures authority; and

"(B) has not been determined by the Commission to be operating in violation of subsection (a).

"(2) Nothing in this subsection shall be construed as implying or creating any presumption that a board of trade, exchange, or market is located outside the United States, or its territories or possessions, for purposes of subsection (a).".

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

"(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.".

SEC. 3116. LEGAL CERTAINTY FOR SWAPS.

Section 22(a)(4) of the Commodity Exchange Act (7 U.S.C. 25(a)(4)) is amended to read as follows:

"(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

"(A) A hybrid instrument sold to any investor shall not be void, voidable, or unenforceable, and a party to such a hybrid instrument shall not be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission; and

"(B) An agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall not be void, voidable, or unenforceable, and a party thereto shall not be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction to meet the definition of a swap set forth in

section 1a, be traded in the manner set forth in section 2(k)(1), or be cleared pursuant to 2(j)(1) or regulations of the Commission pursuant thereto.".

SEC. 3117. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421 and 4422) are repealed.

SEC. 3118. ENFORCEMENT AUTHORITY.

(a) The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4b the following:

"SEC. 4b–1. ENFORCEMENT AUTHORITY.

"(a) CFTC.—Except as provided in subsection (b), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

"(b) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 4s(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

"(c) REFERRAL.—(1) If the Prudential Regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(2) If the Commission has cause to believe that a swap dealer or major swap participant that has a Prudential Regulator may have engaged in conduct that constitutes a violation of the prudential requirements of section 4s or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns given rise to the recommendation.".

(b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

"(3) DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading or practice on or subject to the rules of a registered entity that—

"(A) violates bids and offers (intentionally bidding at a price higher than the lowest offer, or offering at a price lower than the highest bid);

"(B) is, is of the character of, or is commonly known to the trade as 'marking the close' (bidding or offering during or near the market's closing period with the intent to influence the settlement price);

"(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); or

"(D) constitutes uneconomic trading (trading that has no legitimate economic purpose but for the effect on price).

"(4) The Commission may make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to prohibit any other trading practice that is disruptive of fair and equitable trading.".

(2) The amendment made by paragraph (1) shall become effective upon enactment.

SEC. 3119. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking "or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,".

(b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is amended by striking "or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g)," and inserting "or swap,".

(c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is amended by inserting "or swap" before "if the transaction is used or may be used".

(d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2)) is amended by inserting "or of any swap," before "or to corner".

(e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4)) is amended by inserting "swap repository," before "or futures association".

(f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1)) is amended by inserting "swap repository," before "or registered futures association" and by inserting ", or swaps," before "on the basis".

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and inserting after paragraph (5) the following:

"(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, security-based swap repository, or swap execution facility, whether or not it is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or Prudential Regulator for purposes of the Derivative Markets Transparency and Accountability Act of 2009.".

SEC. 3120. RETAIL COMMODITY TRANSACTIONS.

(a) Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking "(other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))" and inserting "(other than section 5b or 12(e)(2)(B))"; and

(2) in paragraph (2), by inserting after subparagraph (C) the following:

"(D) RETAIL COMMODITY TRANSACTIONS.—

"(i) This subparagraph shall apply to, and the Commission shall have jurisdiction over, any agreement, contract, or transaction in any commodity that is—

"(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

"(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

"(ii) Clause (i) shall not apply to—

"(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

"(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business.

"(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

"(iii) Sections 4(a), 4(b) and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

"(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery;

"(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products;

"(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this section.

SEC. 3121. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 3107 of this Act) the following:

"SEC. 4t. LARGE SWAP TRADER REPORTING.

"(a) It shall be unlawful for any person to enter into any swap that performs or affects a significant price discovery function with respect to registered entities if—

"(1) the person directly or indirectly enters into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

"(2) such person directly or indirectly has or obtains a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless 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 paragraphs (1) and (2) as the Commission may by rule or regulation require and unless, 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.

"(b) The books and records shall show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe.

"(c) The books and records shall be open at all times to inspection and examination by any representative of the Commission.

"(d) For the purpose of this subsection, the swaps, futures and cash or spot transactions and positions of any person shall include the transactions and positions of any persons directly or indirectly controlled by the person.

"(e) In making a determination whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider the factors set forth in section 4a(a)(3).".

SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is further amended by inserting after section 4t the following:

"SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL IN OVER-THE-COUNTER SWAP TRANSACTIONS.

"(a) SEGREGATION.—At the request of a swap counterparty who provides funds or other property to a swap dealer initial margin or collateral to secure the obligations of the counterparty under a swap between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the initial margin or collateral in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the

Commission or Prudential Regulator may prescribe. If a swap counterparty is a swap dealer or major swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

"(b) FURTHER AUDIT REPORTING.—If a swap dealer does not segregate funds pursuant to the request of a swap counterparty in accordance with subsection (a), the swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.".

SEC. 3123. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Securities and Exchange Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3124. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term "antitrust laws" has the same meaning given the term in subsection (a) of the first section of the Clayton Act, except that the term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

SEC. 3125. REVIEW OF PRIOR ACTIONS.

Notwithstanding any other provision of the Commodity Exchange Act, the Commodity Futures Trading Commission shall review, as appropriate, all regulations, rules, exemptions, exclusions, guidance, no action letters, orders, other actions taken by or on behalf of the Commission, and any action taken pursuant to the Commodity Exchange Act by an exchange, self-regulatory organization, or any other registered entity, that are currently in effect, to ensure that such prior actions are in compliance with the provisions of this title.

SEC. 3126. EXPEDITED PROCESS.

The Commodity Futures Trading Commission may use emergency and expedited procedures (including any administrative or other procedure as appropriate) to carry out this title if, in its discretion, it deems it necessary to do so.

SEC. 3127. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Commodity Futures Trading Commission from any rulemaking required or directed under this subtitle to implement the provisions of this subtitle.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 3201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (5)(A) and (B), by inserting "(but not security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants)" after the word "securities" in each place it appears;

(2) in paragraph (10), by inserting "security-based swap," after "security future,";

(3) in paragraph (13), by adding at the end the following: "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.";

(4) in paragraph (14), by adding at the end the following: "For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.";

(5) in paragraph (39)—

(A) by striking "or government securities dealer" and adding "government securities dealer, security-based swap dealer or major security-based swap participant" in its place in subparagraph (B)(i)(I);

(B) by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer," in subparagraph (B)(i)(II);

(C) by striking "or government securities dealer" and adding "government securities dealer, security-based swap dealer or major security-based swap participant" in its place in subparagraph (C); and

(D) by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer," in subparagraph (D); and

(6) by adding at the end the following:

"(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, and—

"(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk, including operating and balance sheet risk; or

"(ii) whose outstanding security-based swaps create substantial net counterparty exposure among the aggregate of its counterparties that could expose those counterparties to significant credit losses.

"(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.—The Commission shall define by rule or regulation the terms 'substantial net position', 'substantial net counterparty exposure', and 'significant credit losses' at thresholds that the Commission determines prudent for the effective monitoring, management and oversight of entities which are systemically important or can significantly impact the financial system through counterparty credit risk. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

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

"(68) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act, and that—

"(i) is priumarily based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) is primarily based on a single security or loan, including any interest therein or based on the value thereof; or

"(iii) is primarily based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

"(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

"(C) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because it references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under sec-

tion 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

"(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

"(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant, or any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

"(71) SECURITY-BASED SWAP DEALER.—

"(A) IN GENERAL.—The term 'security-based swap dealer' means any person that—

"(i) holds itself out as a dealer in security-based swaps;

"(ii) makes a market in security-based swaps;

"(iii) regularly engages in the purchase of security-based swaps and their resale to customers in the ordinary course of a business; or

"(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

"(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated a security-based swap dealer for a single type or single class or category of security-based swap and considered not a security-based swap dealer for other types, classes, or categories of security-based swaps.

"(C) DE MINIMUS EXCEPTION.—The Commission shall make a determination to exempt from designation as a security-based swap dealer an entity that engages in a de minimus amount of security-based swap dealing in connection with transactions with or on the behalf of its customers.

"(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(73) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(74) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

"(A) the Board in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

"(i) a State-chartered bank that is a member of the Federal Reserve System; or

"(ii) a State-chartered branch or agency of a foreign bank;

"(B) the Office of the Comptroller of the Currency in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

"(i) a national bank; or

"(ii) a federally chartered branch or agency of a foreign bank; and

"(C) the Federal Deposit Insurance Corporation in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a state-chartered bank that is not a member of the Federal Reserve System.

"(75) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

"(76) SECURITY-BASED SWAP AGREEMENT.—

"(A) IN GENERAL.—For purposes of sections 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term 'security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.

"(76) SECURITY-BASED SWAP REPOSITORY.—The term 'security-based swap repository' means any person that collects, calculates, prepares or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

"(77) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a person or entity that facilitates the execution or trading of security-based swaps between two persons through any means of interstate commerce, but which is not a national securities exchange, including any electronic trade execution or voice brokerage facility."

(b) AUTHORITY TO FURTHER DEFINE TERMS.—The Securities and Exchange Commission may adopt a rule further defining the terms "security-based swap", "security-based swap dealer", "major security-based swap participant", and "eligible contract participant" with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of includ-

ing transactions and entities that have been structured to evade this title.

SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL OF LAW.—Section 206B of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is repealed.

(b) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that such term appears.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a)—

(i) by inserting "(including security-based swaps)" after "securities"; and

(ii) by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(76) of the Securities Exchange Act of 1934"; and

(B) in subsection (d), by striking "206B of the Gramm-Leach-Bliley Act" and inserting "3(a)(76) of the Securities Exchange Act of 1934".

(c) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:

(1) Section 3A (15 U.S.C. 78c–1) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that the term appears.

(2) Section 9(a) (15 U.S.C. 78i(a)) is amended by striking paragraphs (2) through (5) and inserting:

"(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

"(3) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

"(4) If a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a na-

tional securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant or other person selling or offering for sale or purchasing or offering to purchase the security, or a security-based swap or security-based swap agreement with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.".

(3) Section 9(i) (15 U.S.C. 78i(i)) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(4) Section 10 (15 U.S.C. 78j) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" each place that the term appears.

(5) Section 15(c)(1) is amended—

(A) in subparagraph (A), by striking ", or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),"; and

(B) in subparagraphs (B) and (C), by striking "agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)" in each place that the term appears.

(6) Section 15(i) (15 U.S.C. 78o(i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455) is amended by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

(7) Section 16 (15 U.S.C. 78p) is amended—

(A) in subsection (a)(2)(C), by striking "(as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note))";

(B) in subsection (b), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)" in each place that the term appears; and

(C) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)";

(8) Section 20 (15 U.S.C. 78t) is amended—

(A) in subsection (d), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (f), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(9) Section 21A (15 U.S.C. 78u–1) is amended—

(A) in subsection (a)(1), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)"; and

(B) in subsection (g), by striking "(as defined in section 206B of the Gramm-Leach-Bliley Act)".

SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

"SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

"(a) IN GENERAL.—

"(1) STANDARD FOR CLEARING.—A security-based swap shall be submitted for clearing if a clearing agency that is registered under this Act will accept the security-based swap for clearing, and the Commission has determined under paragraph (2)(B)(ii) of subsection (b) that the security-based swap is required to be cleared.

"(2) OPEN ACCESS.—The rules of a clearing agency described in paragraph (1) shall—

"(A) prescribe that all security-based swaps submitted to the clearing agency with the same terms and conditions are economically equivalent within the clearing agency and may be offset with each other within the clearing agency; and

"(B) provide for non-discriminatory clearing of a security-based swap executed bilaterally or on or through the rules of an unaffiliated national securities exchange or swap execution facility.

"(b) COMMISSION REVIEW.—

"(1) COMMISSION-INITIATED REVIEW.—

"(A) The Commission shall review each security-based swap, or any group, category, type or class of security-based swaps to make a determination that such security-based swap, or group, category, type or class of security-based swaps should be required to be cleared.

"(B) The Commission shall provide at least a 30-day public comment period regarding any determination under subparagraph (A).

"(2) SWAP SUBMISSIONS.—

"(A) A clearing agency shall submit to the Commission each security-based swap, or any group, category, type or class of security-based swaps that it plans to accept for clearing and provide notice to its members (in a manner to be determined by the Commission) of such submission.

"(B) The Commission shall—

"(i) make available to the public any submission received under subparagraph (A);

"(ii) review each submission made under subparagraph (A), and determine whether the security-based swap, or group, category, type, or class of security-based swaps, described in the submission is required to be cleared; and

"(iii) provide at least a 30-day public comment period regarding its determination whether the clearing requirement under subsection (a)(1) shall apply to the submission.

"(3) DEADLINE.—The Commission shall make its determination under paragraph (2)(B) not later than 90 days after receiving a submission made under paragraph (2)(A), unless the sub-

mitting clearing agency agrees to an extension for the time limitation established under this paragraph.

"(4) DETERMINATION.—

"(A) In reviewing a submission made under paragraph (2), the Commission shall review whether the submission is consistent with section 5b(c)(2).

"(B) In reviewing a security-based swap, group of security-based swaps or class of security-based swaps pursuant to paragraph (1) or a submission made under paragraph (2), the Commission shall take into account the following factors:

"(i) The existence of significant outstanding notional exposures, trading liquidity and adequate pricing data.

"(ii) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded.

"(iii) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the clearing agency available to clear the contract.

"(iv) The effect on competition, including appropriate fees and charges applied to clearing.

"(v) The existence of reasonable legal certainty in the event of the insolvency of the relevant clearing agency or 1 or more of its clearing members with regard to the treatment of customer and security-based swap counterparty positions, funds, and property.

"(C) In making a determination under paragraph (2)(B) that the clearing requirement shall apply, the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.

"(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for a clearing agency's submission for review, pursuant to this subsection, of a security-based swap, or a group, category, type or class of security-based swaps, that it seeks to accept for clearing.

"(c) STAY OF CLEARING REQUIREMENT.—

"(1) After an determination pursuant to subsection (b)(2), the Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of subsection (a)(1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type or class of security-based swaps) and the clearing arrangement.

"(2) DEADLINE.—The Commission shall complete a review undertaken pursuant to paragraph (1) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this paragraph.

"(3) DETERMINATION.—Upon completion of the review undertaken pursuant to paragraph (1), the Commission may—

"(A) determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type or class of security-based swaps, must be cleared pursuant to this subsection if it finds that such clearing is consistent with subsection (b)(4); or

"(B) determine that the clearing requirement of subsection (a)(1) shall not apply to the security-based swap, or group, category, type or class of security-based swaps.

"(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this subsection, a clearing agency's clearing of a security-based swap, or a group, category, type or class of security-based swaps, that it has accepted for clearing.

"(d) PREVENTION OF EVASION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent evasions of this section.

"(e) REQUIRED REPORTING.—

"(1) IN GENERAL.—All security-based swaps that are not accepted for clearing by any clearing agency shall be reported either to a security-based swap repository described in subsection 13(n) or, if there is no security-based swap repository that would accept the security-based swap, to the Commission pursuant to section 13A within such time period as the Commission may by rule or regulation prescribe. Counterparties to a security-based swap may agree which counterparty will report the security-based swap as required by this paragraph.

"(2) SWAP DEALER DESIGNATION.—With regard to security-based swaps where only 1 counterparty is a security-based swap dealer, the security-based swap dealer shall report the security-based swap as required by this subsection.

"(f) REPORTING TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(1) Security-based swaps entered into before the date of the enactment of this section shall be reported to a registered security-based swap repository or the Commission no later than 180 days after the effective date of this section; and

"(2) Security-based swaps entered into on or after such date of enactment shall be reported to a registered security-based swap repository or the Commission no later than the later of—

"(A) 90 days after such effective date; or

"(B) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

"(g) CLEARING TRANSITION RULES.—

"(1) Security-based swaps entered into before the date of the enactment of this section are exempt from the clearing requirements of this subsection if reported pursuant to subsection (f)(1).

"(2) Security-based swaps entered into before application of the clearing requirement pursuant to this section are exempt

from the clearing requirements of this section if reported pursuant to subsection (f)(2).

"(h) EXCEPTIONS.—

"(1) IN GENERAL.—The requirements of subsection (a)(1) shall not apply to a security-based swap if one of the counterparties to the security-based swap—

"(A) is not a security-based swap dealer or major security-based swap participant; and

"(B) is using security-based swaps to hedge or mitigate commercial risk, including operating or balance sheet risk; and

"(C) notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

"(2) ABUSE OF EXCEPTION.—The Commission may prescribe rules under this subsection, or issue interpretations of the rules, as necessary to prevent abuse of the exemption in paragraph (1) by security-based swap dealers and major security-based swap participants.

"(3) OPTION TO CLEAR.—The application of the clearing exception in paragraph (1) is solely at the discretion the counterparty to the swap that meets the conditions of subparagraphs (A) through (C) of paragraph (1).".

(b) CLEARING AGENCY REQUIREMENTS.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsections:

"(g) REGISTRATION REQUIREMENT.—It shall be unlawful for a clearing agency, 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 clearing agency with respect to a swap.

"(h) VOLUNTARY REGISTRATION.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a clearing agency.

"(i) EXISTING BANKS AND DERIVATIVES CLEARING ORGANIZATIONS.—A bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act required to be a registered as a clearing agency under this title, solely because it clears security-based swaps, is deemed to be a registered clearing agency under this title solely for the purpose of clearing security-based swaps to the extent that the bank cleared security-based swaps, as defined in this Act, as a multilateral clearing organization or the derivatives clearing organization cleared security-based swaps, as defined in this title pursuant to an exemption from registration as a clearing agency, before the enactment of this section. A bank or derivative clearing organization to which this subsection applies shall continue to comply with the requirements in section 17A(b)(3) of this title. A bank to which this subsection applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of such bank, be converted into a State corporation, partnership, limited liability company, or other similar legal form pursuant to a

plan of conversion, if the conversion is not in contravention of applicable State law.

"(j) REPORTING.—

"(1) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act. The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on swap execution facilities. Subject to section 24, the Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

"(k) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall—

"(A) report directly to the board or to the senior officer of the clearing agency;

"(B) in consultation with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, resolve any conflicts of interest that may arise;

"(C) be responsible for administering the policies and procedures required to be established pursuant to this section;

"(D) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

"(E) establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures will establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

"(3) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial

reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(l) STANDARDS FOR CLEARING AGENCIES CLEARING SWAP TRANSACTIONS.—To be registered and to maintain registration as a clearing agency that clears swap transactions, a clearing agency shall comply with such standards as the Commission may establish by rule. In establishing any such standards, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards. Except where the Commission determines otherwise by rule or regulation, a clearing agency shall have reasonable discretion in establishing the manner in which it complies with any such standards.

"(m) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered as clearing agencies for security-based swaps under this Act.

"(n) EXEMPTIONS.—

"(1) IN GENERAL.—The Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission finds that such clearing agency is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator, or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

"(2) A person that is required to be registered as clearing agency under this section, whose principal business is clearing commodity futures and options on commodity futures transactions and which is a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1, et seq.), shall be unconditionally exempt from registration under this section solely for the purpose of clearing security-based swaps, unless the Commission finds that such derivatives clearing organization is not subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission.".

(c) EXECUTION OF SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 5 the following:

"SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.

"(a) EXECUTION TRANSPARENCY.—

"(1) REQUIREMENT.—A security-based swap that is subject to the clearing requirement of section 3B shall not be traded except on or through a national securities exchange or on or through an swap execution facility registered under section 5h, that makes the security-based swap available for trading.

"(2) EXCEPTIONS.—The requirement of paragraph (1) shall not apply to a security-based swap if no national securities ex-

change or swap execution facility makes the security-based swap available for trading.

"(3) REQUIRED REPORTING.—If the exception of paragraph (2) applies and there is no national securities exchange or swap execution facility that makes the security-based swap available to trade, the counterparties shall comply with any recordkeeping and transaction reporting requirements as may be prescribed by the Commission with respect to security-based swaps subject to the requirements of paragraph (1).

"(b) EXCHANGE TRADING.—In adopting rules and regulations, the Commission shall endeavor to eliminate unnecessary impediments to the trading on national securities exchanges of contracts, agreements, or transactions that would be swaps but for the trading of such contracts, agreements or transactions on such a national securities exchange.".

(d) SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding after section 3B (as added by subsection (a)) the following:

"SEC. 3C. SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as a swap execution facility under this section.

"(b) REQUIREMENTS FOR TRADING.—

"(1) IN GENERAL.—A swap execution facility that is registered under subsection (a) may list for trading any security-based swap.

"(2) RULES FOR TRADING THROUGH THE FACILITY.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules to allow a security-based swap to be traded through the facilities of an exchange or a swap execution facility. Such rules shall permit an intermediary, acting as principal or agent, to enter into or execute a security-based swap, notwithstanding section 3B(b), if the security-based swap is reported, recorded, or confirmed in accordance with the rules of the exchange or swap execution facility.

"(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates a swap execution facility and uses the same electronic trade execution system for trading on the exchange and the swap execution facility, identify whether the electronic trading is taking place on the exchange or the swap execution facility.

"(d) CORE PRINCIPLES FOR SWAP EXECUTION FACILITIES.—

"(1) IN GENERAL.—To be registered as, and to maintain its registration as, a swap execution facility, the facility shall comply with the core principles specified in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5). Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with these core principles.

"(2) COMPLIANCE WITH RULES.—The swap execution facility shall—

"(A) monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of

the swaps traded on or through the facility and any limitations on access to the facility; and

"(B) establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether rule violations have occurred.

"(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—The swap execution facility shall—

"(A) establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities; and

"(B) monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—The swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) FINANCIAL INTEGRITY OF TRANSACTIONS.—The swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps pursuant to section 3B.

"(7) EMERGENCY AUTHORITY.—The swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—The swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission. The Commission shall evaluate the impact of public disclosure on market liquidity in the relevant market, and shall seek to avoid public disclosure of information in a manner that would significantly reduce market liquidity. The Commission shall not disclose information related to the internal business decisions of particular market participants.

"(9) RECORDKEEPING AND REPORTING.—The swap execution facility shall maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years, and report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission. The Commission shall adopt data collection and reporting requirements for swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

"(10) CONFLICTS OF INTEREST.—The swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving the conflicts of interest.

"(11) FINANCIAL RESOURCES.—The swap execution facility shall have adequate financial, operational, and managerial resources to discharge its responsibilities. Such financial resources shall be considered adequate if their value exceeds the total amount that would enable the facility to cover its operating costs for a period of one year, calculated on a rolling basis.

"(12) SYSTEM SAFEGUARDS.—The swap execution facility shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the swap execution facility's responsibilities and obligation; and

"(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

"(13) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer—

"(i) shall report directly to the board or to the senior officer of the facility; and

"(ii) shall—

"(I) review compliance with the core principles in section 3B(e).

"(II) in consultation with the board of the facility, a body performing a function similar to that

of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

"(III) be responsible for administering the policies and procedures required to be established pursuant to this section; and

"(IV) ensure compliance with securities laws and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section; and

"(iii) shall establish procedures for remediation of non-compliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints and to establish the handling, management response, remediation, re-testing, and closing of non-compliant issues.

"(C) ANNUAL REPORTS REQUIRED.—The compliance officer shall annually prepare and sign a report on the compliance of the facility with the securities laws and its policies and procedures, including its code of ethics and conflict of interest policies, in accordance with rules prescribed by the Commission. Such compliance report shall accompany the financial reports of the facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.

"(f) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall prescribe rules governing the regulation of swap execution facilities under this section.".

(e) SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by subsection (b) the following:

"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

"(a) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a security-based swap dealer as initial margin or collateral to secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a derivatives clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the

Commission or Prudential Regulator may prescribe. If a security-based swap counterparty is a security-based swap dealer or major security-based swap participant who owns more than 20 percent of, or has more than 50 percent representation on the board of directors of a custodian, the custodian shall not be considered independent from the security-based swap counterparties for purposes of the preceding sentence. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment.

"(b) FURTHER AUDIT REPORTING.—If a security-based swap dealer does not segregate funds pursuant to the request of a security-based swap counterparty in accordance with subsection (a), the security-based swap dealer shall report to its counterparty on a quarterly basis that its procedures relating to margin and collateral requirements are in compliance with the agreement of the counterparties.".

(f) TRADING IN SECURITY-BASED SWAPS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

"(l) It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).".

(g) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1) through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

"(1) any transaction in connection with any security whereby any party to such transaction acquires (A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so; (B) any security futures product on the security; or (C) any security-based swap involving the security or the issuer of the security; or

"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product; or (C) such security-based swap; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any (A) such put, call, straddle, option, or privilege; (B) such security futures product with relation to such security; or (C) any security-based swap involving such security or the issuer of such security.".

(h) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

"(i) 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 national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or ma-

nipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.".

(i) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

"SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

"(a) POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the size of positions in any security-based swap that may be held by any person. In establishing such limits, the Commission may require any person to aggregate positions in—

"(1) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

"(2) any security-based swap and (A) any security or group or index of securities, the price, yield, value, or volatility of which, or of which any interest therein, is the basis for a material term of such security-based swap as described in section 3(a)(76) and (B) any security-based swap and any other instrument relating to the same security or group or index of securities.

"(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

"(c) SRO RULES.—

"(1) IN GENERAL.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

"(A) to adopt rules regarding the size of positions in any security-based swap that may be held by—

"(i) any member of such self-regulatory organization; or

"(ii) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap; and

"(B) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (c)(1)(A).

"(2) REQUIREMENT TO AGGREGATE POSITIONS.—In establishing such limits, the self-regulatory organization may require such member or person to aggregate positions in—

"(A) any security-based swap and any security or loan or group or index of securities or loans on which such security-based swap is based, which such security-based swap references, or to which such security-based swap is related as described in section 3(a)(68), and any other instrument relating to such security or loan or group or index of securities or loans; or

"(B)(i) any security-based swap; and

"(ii) any security-based swap and any other instrument relating to the same security or group or index of securities.

"(d) LARGE TRADER REPORTING.—The Commission, by rule or regulation, may require any person that effects transactions for such person's own account or the account of others in any securities-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section to report such information as the Commission may prescribe regarding any position or positions in any security-based swap or uncleared security-based swap agreement and any security or loan or group or index of securities or loans and any other instrument relating to such security or loan or group or index of securities or loans as set forth in paragraphs (1) and (2) of subsection (a) under this section.".

(j) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAPS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) clearing agencies pursuant to section 3A;

"(B) security-based swap repositories pursuant to subsection (n); and

"(C) reports received by the Commission pursuant to section 13A.

"(n) SECURITY-BASED SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commis-

sion, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

"(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

"(3) DUTIES.—A security-based swap repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

"(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing persons that are registered under this section, including rules that specify the data elements that shall be collected and maintained.

"(5) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country or if necessary or appropriate in the public interest and consistent with the purpose of this Act.".

SEC. 3204. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 15E (15 U.S.C. 78o–7) the following:

"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"(a) REGISTRATION.—

"(1) It shall be unlawful for any person to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission.

"(2) It shall be unlawful for any person to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c) and (d), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsection (d)(1)(A), the Commission may provide conditional or unconditional exemptions from some or all of the rules or requirements prescribed under this section for security-based swap dealers and major security-based swap participants.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants no later than 1 year after the effective date of the Derivative Markets Transparency and Accountability Act of 2009.

"(c) RULES.—

"(1) IN GENERAL.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules for persons that are registered as security-based swap dealers or major security-based swap participants under this Act.

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission shall not prescribe rules imposing prudential requirements on security-based swap dealers or major security-based

swap participants for which there is a Prudential Regulator. This provision shall not be construed as limiting the authority of the Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(d) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Prudential Regulators shall by rule or regulation jointly prescribe that—

"(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

"(ii) are appropriate for the risk associated with the non-cleared swaps held as a swap dealer or major swap participant.

"(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which there is not a Prudential Regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission shall by rule or regulation prescribe that—

"(i) help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant; and

"(ii) are appropriate for the risk associated with the non-cleared swaps held as the swap dealer or major swap participant.

"(2) RULES.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Prudential Regulators, in consultation with the Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants, with respect to their activities as a security-based swap dealer or major security-based swap participant for which there is a Prudential Regulator.

"(B) NON-BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which there is no Prudential Regulator.

"(3) AUTHORITY.—Nothing in this section shall limit the authority of the Commission to set capital requirements for a broker or dealer registered in accordance with section 15 of this Act.

"(e) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation regarding the transactions and positions and financial condition of such person;

"(B) for which—

"(i) there is a Prudential Regulator shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation;

"(ii) there is no Prudential Regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing reporting and recordkeeping for security-based swap dealers and major security-based swap participants.

"(f) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall maintain daily trading records of its security-based swaps and all related records (including related transactions) and recorded communications including but not limited to electronic mail, instant messages, and recordings of telephone calls, for such period as may be prescribed by the Commission by rule or regulation.

"(2) INFORMATION REQUIREMENTS.—The daily trading records shall include such information as the Commission shall prescribe by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each security-based swap transaction.

"(4) AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(5) RULES.—Not later than 1 year after the date of the enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission shall adopt rules governing daily trading records for security-based swap dealers and major security-based swap participants.

"(g) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with business conduct standards as may be prescribed by the Commission by rule or regulation addressing—

"(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

"(B) diligent supervision of its business as a security-based swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission shall—

"(A) establish the standard of care for a security-based swap dealer or major security-based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a security-based swap dealer or major security-based swap participant) of:

"(i) information about the material risks and characteristics of the security-based swap;

"(ii) for cleared security-based swaps, upon the request of the counterparty, the daily mark from the appropriate clearing agency, and for non-cleared security-based swaps, upon request of the counterparty, the daily mark of the security-based swap dealer or major security-based swap participant; and

"(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

"(C) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(3) RULES.—The Commission shall prescribe rules under this subsection governing business conduct standards for security-based swap dealers and major security-based swap participants not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009.

"(h) DOCUMENTATION STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

"(2) RULES.—Not later than 1 year after the date of enactment of the Derivative Markets Transparency and Accountability Act of 2009, the Commission and the appropriate Federal banking agencies, shall adopt rules governing the standards described in paragraph (1) for security-based swap dealers and major security-based swap participants.

"(i) DEALER RESPONSIBILITIES.—Each registered security-based swap dealer and major security-based swap participant at all times shall comply with the following requirements:

"(1) MONITORING OF TRADING.—The security-based swap dealer or major security-based swap participant shall monitor its trading in security-based swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The security-based swap dealer or major security-based swap participant shall disclose to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, information concerning—

"(A) terms and conditions of its security-based swaps;

"(B) security-based swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to security-based swaps; and

"(D) other information relevant to its trading in security-based swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission or to the Prudential Regulator for such security-based swap dealer or major security-based swap participant, as applicable, upon request.

"(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict-of-interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(j) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap par-

ticipant, 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 statutory disqualification.

"(k) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

"(1) PRIMARY ENFORCEMENT AUTHORITY.—

"(A) SEC.—Except as provided in subparagraph (B), the Commission shall have exclusive authority to enforce the amendments made by subtitle B of the Derivative Markets Transparency and Accountability Act of 2009 with respect to any person.

"(B) PRUDENTIAL REGULATORS.—The Prudential Regulators shall have exclusive authority to enforce the provisions of section 15F(d) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

"(C) REFERRAL.—

"(i) VIOLATIONS OF NONPRUDENTIAL REQUIREMENTS.—If the Prudential Regulator for a security-based swap dealer or major security-based swap participant has cause to believe that such security-based swap dealer or major security-based swap participant may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, that Prudential Regulator may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(ii) VIOLATIONS OF PRUDENTIAL REQUIREMENTS.—If the Commission has cause to believe that a securities-based swap dealer or major securities-based swap participant that has a Prudential Regulator may have engaged in conduct that constitute a violation of the prudential requirements of section 15F(e) or rules adopted thereunder, the Commission may recommend in writing to the Prudential Regulator that the Prudential Regulator initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(2) CENSURE, DENIAL, SUSPENSION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or revoke the registration of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or revocation is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting

or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

"(3) ASSOCIATED PERSONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(A) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, enumerated in subparagraph (G) of such paragraph (4).

"(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.".

SEC. 3205. REPORTING AND RECORDKEEPING.

(a) The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

"SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

"(a) IN GENERAL.—Any person who enters into a security-based swap and—

"(1) did not clear the security-based swap in accordance with section 3A; and

"(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n),

shall meet the requirements in subsection (b).

"(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

"(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under subsection (n).".

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule, and" after "Alaska Native Claims Settlement Act,"; and

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule" after "subsection (d)(1) of this section".

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule," after "subsection (d)(1) of this section".

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by adding "security-based swap dealer, major security-based swap participant," after "government securities dealer,"; and

(2) in subparagraph (F), by adding ", or security-based swap dealer, or a major security-based swap participant" after "or dealer".

(e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(o) BENEFICIAL OWNERSHIP.—For purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap or other derivative instrument only to the extent that the Commission, by rule, determines after consultation with the Prudential Regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap or other derivative instrument, or class of security-based swaps or other derivative instruments, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps or instrument, or class of security-based swap or instruments, be deemed the acquisition of beneficial ownership of the equity security.".

SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

"(a) Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate (1) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental

or related to the offer, purchase, sale, exercise, settlement, or close-out of any such security, (2) any security-based swap between eligible contract participants, or (3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b). No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under State law.''.

SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting "security-based swap," after "security future,";

(2) in paragraph (3) by adding at the end the following: "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities."; and

(3) by adding at the end the following:

"(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934.

"(18) The terms 'purchase' or 'sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

(b) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 is amended by adding at the end the following:

"(15) Any security-based swap, as defined in section 2(a)(17) that is not otherwise a security as defined in section 2(a)(1) and that satisfies such conditions as established by rule or regulation by the Commission consistent with the provisions of the Derivative Markets Transparency and Accountability Act of 2009. The Commission shall promulgate rules implementing this exemption.''.

(c) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

"(d) Notwithstanding the provisions of section 3 or section 4, unless a registration statement meeting the requirements of subsection (a) of section 10 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(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)).''.

SEC. 3208. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 3209. JURISDICTION.

(a) Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended by adding at the end the following new subsection:

"(c) DERIVATIVES.—The Commission shall not grant exemptions from the security-based swap provisions of the Derivative Markets Transparency and Accountability Act of 2009, except as expressly authorized under the provisions of that Act.".

(b) Section 30 of the Securities Exchange Act of 1934 is amended by adding at the end the following:

"(c) No provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009 or any rule or regulation thereunder shall apply to any person insofar as such person transacts a business in security-based swaps without the jurisdiction of the United States unless he transacts such business in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate to prevent the evasion of any provision of this Act that was added by the Derivative Markets Transparency and Accountability Act of 2009. This subsection shall not be construed to limit the jurisdiction of the Commission under any provision of this Act as in effect prior to enactment of the Derivative Markets Transparency and Accountability Act of 2009.".

SEC. 3210. EFFECTIVE DATE.

(a) Unless otherwise provided, the provisions of this subtitle shall become effective the later of 270 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires rulemaking, no less than 60 days after publication of a final rule or regulation implementing such provision of this subtitle.

(b) Subsection (a) shall not preclude the Securities Exchange Commission from any rulemaking required to implement the provisions of this subtitle.

Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability

SEC. 3301. ELEVATION OF CERTAIN INSPECTORS GENERAL TO APPOINTMENT PURSUANT TO SECTION 3 OF THE INSPECTOR GENERAL ACT OF 1978.

(a) INCLUSION IN CERTAIN DEFINITIONS.—Section 12 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1), by striking "or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;" and inserting "the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; the Chairman of the Board of Governors of the Federal Reserve System; the Chairman of the Commodity Futures Trading Commission; the Chairman of the National Credit Union Administration; the

Director of the Pension Benefit Guaranty Corporation; the Chairman of the Securities and Exchange Commission; or the Director of the Consumer Financial Protection Agency;''; and

(2) in paragraph (2), by striking ''or the Commissions established under section 15301 of title 40, United States Code,'' and inserting ''the Commissions established under section 15301 of title 40, United States Code, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, or the Director of the Consumer Financial Protection Agency,''.

(b) EXCLUSION FROM DEFINITION OF DESIGNATED FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by striking ''the Board of Governors of the Federal Reserve System,'';

(2) by striking ''the Commodity Futures Trading Commission,'';

(3) by striking ''the National Credit Union Administration,''; and

(4) by striking ''the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission,''.

SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO PERSONNEL.

(a) IN GENERAL.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8L the following:

''SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ESTABLISHMENTS.

''(a) DEFINITION.—For purposes of this section, the term 'covered establishment' means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, and the Securities and Exchange Commission.

''(b) PROVISIONS RELATING TO ALL COVERED ESTABLISHMENTS.—

''(1) PROVISIONS RELATING TO INSPECTORS GENERAL.—In the case of the Inspector General of a covered establishment, subsections (b) and (c) of section 4 of the Inspector General Reform Act of 2008 (Public Law 110–409) shall apply in the same manner as if such covered establishment were a designated Federal entity under section 8G. An Inspector General who is subject to the preceding sentence shall not be subject to section 3(e).

''(2) PROVISIONS RELATING TO OTHER PERSONNEL.—Notwithstanding paragraphs (7) and (8) of section 6(a), the Inspector General of a covered establishment may select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General of such establishment and to obtain the temporary or intermittent services of experts or consultants or an organization of experts or consultants, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within such establishment.

''(c) PROVISION RELATING TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.—The provisions of subsection (a) of sec-

tion 8D (other than the provisions of subparagraphs (A), (B), (C), and (E) of paragraph (1) of such subsection (a)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.''.

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 8G(g) of the Inspector General Act of 1978 (5 U.S.C. App.) is repealed.

SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CERTAIN ESTABLISHMENTS TO DEFICIENCIES IDENTIFIED BY INSPECTORS GENERAL.

The Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Commodity Futures Trading Commission, the Chairman of the National Credit Union Administration, the Director of the Pension Benefit Guaranty Corporation, and the Chairman of the Securities and Exchange Commission shall each—

(1) take action to address deficiencies identified by a report or investigation of the Inspector General of the establishment concerned; or

(2) certify to both Houses of Congress that no action is necessary or appropriate in connection with a deficiency described in paragraph (1).

SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.

(a) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall take effect 30 days after the date of the enactment of this subtitle.

(b) TRANSITION RULE.—An individual serving as Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission on the effective date of this subtitle pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(1) may continue so serving until the President makes an appointment under section 3(a) of such Act with respect to the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, consistent with the amendments made by section 301; and

(2) shall, while serving under paragraph (1), remain subject to the provisions of section 8G of such Act which, immediately before the effective date of this subtitle, applied with respect to the Inspector General of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the National Credit Union Administration, the Pension Benefit Guaranty Corporation, or the Securities and Exchange Commission, as the case may be, and suffer no reduction in pay.

Page 694, beginning on line 19, strike ''a designated Federal entity'' and insert ''an establishment''.

In the table of contents, strike the items relating to title III, subtitles A, B, and C of title III, and sections 3001 through 3304 and insert the following:

TITLE III—DERIVATIVE MARKETS TRANSPARENCY AND ACCOUNTABILITY ACT

Sec. 3001. Short title.
Sec. 3002. Review of regulatory authority.
Sec. 3003. International harmonization.
Sec. 3004. Prohibition against government assistance.
Sec. 3005. Studies.
Sec. 3006. Recommendations for changes to insolvency laws.
Sec. 3007. Abusive swaps.
Sec. 3008. Authority to prohibit participation in swap activities.
Sec. 3009. Memorandum.

Subtitle A—Regulation of Swap Markets

Sec. 3101. Definitions.
Sec. 3102. Jurisdiction.
Sec. 3103. Clearing and execution transparency.
Sec. 3104. Public reporting of aggregate swap data.
Sec. 3105. Swap repositories.
Sec. 3106. Reporting and recordkeeping.
Sec. 3107. Registration and regulation of swap dealers and major swap participants.
Sec. 3108. Conflicts of interest.
Sec. 3109. Swap execution facilities.
Sec. 3110. Derivatives transaction execution facilities and exempt boards of trade.
Sec. 3111. Designated contract markets.
Sec. 3112. Margin.
Sec. 3113. Position limits.
Sec. 3114. Enhanced authority over registered entities.
Sec. 3115. Foreign boards of trade.
Sec. 3116. Legal certainty for swaps.
Sec. 3117. FDICIA amendments.
Sec. 3118. Enforcement authority.
Sec. 3119. Enforcement.
Sec. 3120. Retail commodity transactions.
Sec. 3121. Large swap trader reporting.
Sec. 3122. Segregation of assets held as collateral in swap transactions.
Sec. 3123. Other authority.
Sec. 3124. Antitrust.
Sec. 3125. Review of prior actions.
Sec. 3126. Expedited process.
Sec. 3127. Effective date.

Subtitle B—Regulation of Security-Based Swap Markets

Sec. 3201. Definitions under the Securities Exchange Act of 1934.
Sec. 3202. Repeal of prohibition on regulation of security-based swaps.
Sec. 3203. Amendments to the Securities Exchange Act of 1934.
Sec. 3204. Registration and regulation of swap dealers and major swap participants.
Sec. 3205. Reporting and recordkeeping.
Sec. 3206. State gaming and bucket shop laws.
Sec. 3207. Amendments to the Securities Act of 1933; treatment of security-based swaps.
Sec. 3208. Other authority.
Sec. 3209. Jurisdiction.
Sec. 3210. Effective date.

Subtitle C—Improved Financial and Commodity Markets Oversight and Accountability

Sec. 3301. Elevation of certain Inspectors General to appointment pursuant to section 3 of the Inspector General Act of 1978.
Sec. 3302. Continuation of provisions relating to personnel.

Sec. 3303. Corrective responses by heads of certain establishments to deficiencies identified by Inspectors General.
Sec. 3304. Effective date; transition rule.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERSON, COLLIN OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. ______. AUTHORITY OF THE COMMODITY FUTURES TRADING COMMISSION TO DEFINE "COMMERCIAL RISK", "OPERATING RISK", AND "BALANCE SHEET RISK".

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a), as amended by the preceding provisions of this Act, is amended by adding at the end the following:

"(51) COMMERCIAL RISK; OPERATING RISK; BALANCE SHEET RISK.—The terms 'commercial risk', 'operating risk', and 'balance sheet risk' shall have such meanings as the Commission may prescribe.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in subtitle A.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LYNCH, STEPHEN OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. _____. CONFLICTS OF INTEREST IN CLEARING ORGANIZATIONS.

(a) COMMODITY EXCHANGE ACT.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

"(51) RESTRICTED OWNER.—The term 'restricted owner' means any swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant, that is an identified financial holding company as defined in Section 1000(b)(5) of the Financial Stability Improvement Act of 2009, or a person associated with a swap dealer or a major swap participant that is an identified financial holding company, or a person associated with a security-based swap dealer or major security-based swap participant that is an identified financial holding company.".

(2) CONFLICTS OF INTEREST.—

(A) Subparagraph (P) of section 5b(c)(2) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end of such subparagraph the following: "The rules of the derivatives clearing organization that clears swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the organization or in persons with a controlling interest in the organization, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than

20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the derivatives clearing organization shall provide that a majority of the directors of the organization shall not be associated with a restricted owner. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational derivatives clearing organization acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.".

(B) Section 4s(g)(1) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended—

(i) by striking "and" at the end of subparagraph (C); and

(ii) by redesignating subparagraph (D) as subparagraph (E) and insert after subparagraph (C) the following:

"(D) the prevention of self-dealing, by limiting the extent to which such a swap dealer or major swap participant may conduct business with a derivatives clearing organization, a board of trade, or an alternative swap execution facility that clears or trades swaps and in which such a swap dealer or major swap participant has a material debt or equity investment; and".

(C) Paragraph (12) of section 5h(d) of the Commodity Exchange Act (as added by the preceding provisions of this Act) is amended by adding at the end the following new subparagraph:

"(C) The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

"(D) The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner.".

(D) Section 5(d) of the Commodity Exchange Act (as amended by the preceding provisions of this Act) is further amended by striking paragraph (15) and inserting the following:

"(15) CONFLICTS OF INTEREST.—

"(A) The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market, and establish a process for resolving any such conflicts of interest.

"(B) The rules of a board of trade that trades swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the board of trade or in persons with a controlling interest in the board of trade, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational board of trade acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.

"(C) The rules of a board of trade that trades swaps shall provide that a majority of the directors of the board of trade shall not be associated with a restricted owner.".

(b) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF RESTRICTED OWNER.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) (as amended by the preceding provisions of this Act) is further amended by adding at the end the following:

"(78) RESTRICTED OWNER.—The term 'restricted owner' has the same meaning as in section 1a(51) of the Commodity Exchange Act.".

(2) CONFLICTS OF INTEREST.—

(A) Paragraph (10) of section 3C(d) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended by adding after subparagraph (B) the following:

"The rules of the swap execution facility shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the facility or in persons with a controlling interest in the facility, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. The rules of the swap execution facility shall provide that a majority of the directors of the facility shall not be associated with a restricted owner. This paragraph shall not be construed to require divestiture of any interest

of a restricted owner in an established and operational swap execution facility acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(B) Section 15F(g)(1) of the Securities Exchange Act of 1934 (as added by the preceding provisions of this Act) is amended—

(i) in subparagraph (C), strike "and"; and

(ii) insert after subparagraph (C) the following (and redesignate the succeeding subparagraph accordingly):

"(D) the prevention of self-dealing by limiting the extent to which a security-based swap dealer or major security-based swap participant may conduct business with a clearing agency, an exchange, or an alternative swap execution facility that clears or trades security-based swaps and in which such a dealer or participant has a material debt or equity investment; and".

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

"(10) The rules of the exchange minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts of interest.

"(11) The rules of an exchange that trades security-based swaps provide that a majority of the directors of the exchange shall not be associated with a restricted owner.

"(12) The rules of an exchange that trades security-based swaps provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the exchange or in persons with a controlling interest in the exchange, to the extent that such an acquisition would result in restricted owners being entitled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This paragraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational exchange acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this paragraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this paragraph.".

(D) Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at the end the following new subparagraphs:

"(J) The rules of a clearing agency that clears security-based swaps shall provide that a restricted owner shall not be permitted directly or indirectly to acquire beneficial ownership of interests in the agency or in persons with a controlling interest in the agency, to the extent that such an acquisition would result in restricted owners being enti-

tled to vote, cause the voting of, or cause the withholding of votes of, more than 20 percent of the votes entitled to be cast on any matter by the holders of the ownership interests. This subparagraph shall not be construed to require divestiture of any interest of a restricted owner in an established and operational clearing agency acquired prior to January 1, 2010, provided that acquisitions by such restricted owner after such date shall be subject to this subparagraph. The Commission may determine whether any acquisition by a restricted owner during any interim period prior to the date of the enactment of this Act has been made for the purpose of avoiding the effect of this subparagraph.

"(K) The rules of the clearing agency shall provide that a majority of the directors of the agency shall not be associated with a restricted owner.".

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6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MURPHY, SCOTT OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. ______. DEFINITIONS OF MAJOR SWAP PARTICIPANT AND MAJOR SECURITY-BASED SWAP PARTICIPANT.

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

"(39) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

"(i) maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

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

"(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term 'substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared swaps.

"(C) A person may be designated a major swap participant for 1 or more individual types of swaps without being classified as a major swap participant for all classes of swaps.".

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

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, and—

"(i) maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for hedging, reducing or otherwise mitigating its commercial risk; or

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

"(B) DEFINITION OF SUBSTANTIAL NET POSITION.—The Commission shall define by rule or regulation the term 'substantial net position' at a threshold that the Commission determines prudent for the effective monitoring, management, and oversight of entities which are systemically important or can significantly impact the financial system. In setting the definitions, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps.

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

(c) EFFECTIVE DATES.—

(1) MAJOR SWAP PARTICIPANT.—The amendment made by subsection (a)(1) shall take effect as if included in subtitle A.

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

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7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK, BARNEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. _______. AUTHORITY TO SET MARGIN OR COLLATERAL REQUIREMENT FOR SWAPS AND SECURITY-BASED SWAPS INVOLVING END USERS.

(a) IN GENERAL.—Subject to subsection (b):

(1) PRUDENTIAL REGULATORS.—A Prudential Regulator may impose a margin or collateral requirement with respect to a swap or security-based swap a counterparty to which is an end user which is a bank or bank holding company subject to regulation by the Prudential Regulator.

(2) COMMODITY FUTURES TRADING COMMISSION.—The Commodity Futures Trading Commission may impose a margin or collateral requirement with respect to a swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a swap dealer or major swap participant for which there is no Prudential Regulator.

(3) SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission may impose a margin or collateral requirement with respect to a security-based swap a counterparty to which is an end user (other than an end user described in paragraph (1)), and the other counterparty to which is a security-based swap dealer or major security-based swap participant for which there is no Prudential Regulator.

(b) REQUIREMENTS.—Any margin or collateral requirement imposed under subsection (a) with respect to a transaction shall be commensurate with the risk involved in the transaction, and allow for the use of non-cash collateral.

(c) LIMITATION ON APPLICABILITY.—This section shall not apply to a swap or security-based swap entered into before the end of the 90-day period that begins with the effective date of this section.

(d) DEFINITIONS.—In this section:

(1) END USER.—The term "end user" means a person who is not a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant.

(2) OTHER TERMS.—The other terms shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

(e) EFFECTIVE DATE.—

(1) PRUDENTIAL REGULATORS.—Subsection (a)(1) shall take effect—

(A) with respect to swaps, as if included in subtitle A; and

(B) with respect to security-based swaps, as if included in subtitle B.

(2) COMMODITY FUTURES TRADING COMMISSION.—Subsection (a)(2) shall take effect as if included in subtitle A.

(3) SECURITIES AND EXCHANGE COMMISSION.—Subsection (a)(3) shall take effect as if included in subtitle B.

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8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STUPAK, BART OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. ______. ADDITIONAL RULES REGARDING EXECUTION AND CLEARING OF SWAPS AND SECURITY-BASED SWAPS.

(a) SWAPS.—Section 2(j)(7) of the Commodity Exchange Act (7 U.S.C. 2), as added by the preceding provisions of this Act, is amended—

(1) in subparagraph (A), by striking "and where both counterparties are either swap dealers or major swap participants, such counterparties" and inserting ", the parties"; and

(2) by redesignating subparagraph (C) as subparagraph (D) and inserting after subparagraph (B) the following:

"(C) CERTAIN SWAPS NOT REQUIRED TO BE CLEARED.—

"(i) IN GENERAL.—A swap that qualifies for the exception of paragraph (8)(A)(i) shall not be executed, except on or through a swap execution facility registered with the Commission.

"(ii) ADDITIONAL EXCEPTIONS.—Clause (i) shall not apply to a swap if no swap execution facility makes the swap available to trade or execute.

"(iii) RULE OF INTERPRETATION.—This subparagraph shall not be interpreted to require any swap to be cleared.".

(b) SECURITY-BASED SWAPS.—Section 5A(a) of the Securities Exchange Act of 1934, as added by the preceding provisions of this Act, is amended—

(1) in paragraph (1), by striking "section 3B and where both counterparties are either swap dealers or major swap participants, such counterparties" and inserting "section 3B(a)(1), the parties"; and

(2) by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

"(3) CERTAIN SECURITY-BASED SWAPS NOT REQUIRED TO BE CLEARED.—

"(A) IN GENERAL.—A security-based swap that qualifies for the exception of section 3B(h)(1)(A) shall not be executed except on a swap execution facility registered with the Commission.

"(B) ADDITIONAL EXCEPTIONS.—Subparagraph (A) shall not apply to a security-based swap if no swap execution facility makes the security-based swap available to trade or execute.

"(C) RULE OF INTERPRETATION.—This paragraph shall not be interpreted to require any security-based swap to be cleared.".

(c) EFFECTIVE DATE.—

(1) SWAPS.—The amendments made by subsection (a) shall take effect as if included in subtitle A.

(2) SECURITY-BASED SWAPS.—The amendments made by subsection (b) shall take effect as if included in subtitle B.

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9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STUPAK, BART OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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

SEC. _______. AUTHORITY TO BAN ABUSIVE SWAPS.

The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly, by rule or order, prohibit transactions in any swap (as defined in section 1a(35) of the Commodity Exchange Act) or security-based swap (as defined in section 1a(38) of such Act) which the Commodity Futures Trading Commission and the Securities Exchange Commission find would be detrimental to the stability of a financial market or of participants in a financial market.

SEC. _______. ELIMINATION OF CONSIDERATION OF BALANCE SHEET RISK IN DETERMINING THE COMMERICAL RISK OF BONA FIDE HEDGING END USERS.

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

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

(c) Section 3(a)(67)(A)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding provisions of this Act, is amended by striking "and balance sheet".

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

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

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

SEC. _______. LEGAL CERTAINTY OF CERTAIN SWAP CONTRACTS.

(a) IN GENERAL.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)), as amended by the preceding provisions of this Act, is amended—

(1) in paragraph (4)(A), by inserting ", and entered into before the effective date of this paragraph," after "investor";

(2) in paragraph (4)(B), by inserting ", and entered into before the effective date of this paragraph," after "between eligible contract participants"; and

(3) in paragraph (5), by inserting ", and entered into before the effective date of this paragraph," after "United States".

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

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10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MATSUI, DORIS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 465, after line 2, insert the following new subtitle:

Subtitle L—Making Home Affordable Program

SEC. 9911. PUBLIC AVAILABILITY OF INFORMATION.

(a) REVISIONS TO PROGRAM GUIDELINES.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to provide that the data being collected by the Secretary from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (b).

(b) PUBLIC AVAILABILITY.—Data shall be made available according to the following guidelines:

(1) Not more than 14 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, reports shall be made publicly available by means of a World Wide Web site of the Secretary, and by submitting a report to the Congress, that shall include the following information:

(A) The number of requests for mortgage modifications under the Program that the servicer or lender has received.

(B) The number of requests for mortgage modifications under the Program that the servicer or lender has processed.

(C) The number of requests for mortgage modifications under the Program that the servicer or lender has approved.

(D) The number of requests for mortgage modifications under the Program that the servicer or lender has denied.

(2) Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lenders participating in the Program, the Secretary shall make data tables available to the public at the individual record level. The Secretary shall issue regulations prescribing—

(A) the procedures for disclosing such data to the public; and

(B) such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any mortgage modification applicant, including the deletion or alteration of the applicant's name and identification number.

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11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PAULSEN, ERIK OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 21, line 23, insert "and shall not be excluded from any of the Council's proceedings, meetings, discussions and deliberations" after "advisory capacity":

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12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KANJORSKI, PAUL OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 11, in the item relating to section 7606, strike "Exemption for nonaccelerated filers" and insert "Study on methods to reduce the burden of compliance on small companies".

Page 1221, line 19, strike **"EXEMPTION FOR NONACCELERATED FILERS"** and insert " **STUDY ON METHODS TO REDUCE THE BURDEN OF COMPLIANCE ON SMALL COMPANIES"**.

Page 1221, strike lines 20 through 25.

Page 1222, strike lines 1 through 2.

Page 1222, on line 3, strike "(b) STUDY.—" and adjust the indentation appropriately.

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13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARSHALL, JIM OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 893, after line 8, insert the following new section (and redesignate the subsequent sections and conform the table of contents in section 2 accordingly):

SEC. 4508. NO PRIVATE RIGHT OF ACTION.

Nothing in this title shall be construed to create a private right of action, but this section shall not be construed or interpreted to

deny any private right of action arising under the enumerated consumer laws or the authorities transferred under subtitle F or H.

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14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCCARTHY, KEVIN OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 6012 (relating to "Effect of Rule 436(G)").

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15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COHEN, STEVE OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 1126, line 6, strike "subsections" and insert "subsection".
Page 1126, strike lines 15 through 25.

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16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERS, GARY OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 402, after line 18, insert the following subparagraph:

(E) ADDITIONAL AUTHORIZED ASSESSMENTS.—The Corporation is authorized to conduct risk-based assessments on financial companies in such amount and manner and subject to terms and conditions that the Corporation determines, with the concurrence of the Secretary of the Treasury and the Federal Reserve Board, are necessary to pay any shortfall in the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 that would add to the deficit or national debt, as identified by the Director of the Office of Management and Budget, in consultation with the Director of the Congressional Budget Office pursuant to section 134 of such Act (12 U.S.C. § 5239).

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17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT, MELVIN OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 772, strike line 12 and all that follows through page 773, line 22, and insert the following:

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments, over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(2) CERTAIN ACTIVITIES EXCEPTED.—Paragraph (1) shall not apply to—

(A) any motor vehicle dealer to the extent that such motor vehicle dealer engages in any financial activity other than extending credit or leasing exclusively for the purpose of enabling a consumer to purchase, lease, rent, re-

pair, refurbish, maintain, or service a motor vehicle from that motor vehicle dealer; or

(B) any credit transaction involving a person who operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(i) the extension of retail credit or retail leases is provided directly to consumers; and

(ii) the contracts governing such extensions of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

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18. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK, BARNEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike section 6005 and redesignate the subsequent sections in subtitle B of title V and conform the table of contents in section 2 accordingly.

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19. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS JR., JOHN OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, insert the following (and make such technical and conforming changes as may be appropriate):

TITLE VII—PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A—Modification of Residential Mortgages

SEC. 9001. DEFINITION.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following (and make such technical and conforming changes as may be appropriate):

"(43A) The term 'qualified loan modification' means a loan modification agreement made in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, that—

"(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

"(B) requires no fees or charges to be paid by the debtor in order to obtain such modification; and

"(C) permits the debtor to continue to make payments under the modification agreement notwithstanding the fil-

ing of a case under this title, as if such case had not been filed.".

SEC. 9002. ELIGIBILITY FOR RELIEF.

Section 109 of title 11, United States Code, is amended—

(1) by adding at the end of subsection (e) the following: "For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of—

"(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection; or

"(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection.", and

(2) by adding at the end of subsection (h) the following:

"(5) Notwithstanding the 180-day period specified in paragraph (1), with respect to a debtor in a case under chapter 13 who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence, the requirements of paragraph (1) shall be considered to be satisfied if the debtor satisfies such requirements not later than the expiration of the 30-day period beginning on the date of the filing of the petition.".

SEC. 9003. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "or" at the end,

(2) in paragraph (9) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this paragraph shall be construed to modify, impair, or supersede any other right of the debtor.".

SEC. 9004. AUTHORITY TO MODIFY CERTAIN MORTGAGES.

Section 1322 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (11) as paragraph (12),

(B) in paragraph (10) by striking "and" at the end, and

(C) by inserting after paragraph (10) the following:

"(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the

holder of such claim (and the rights of the holder of any claim secured by a subordinate security interest in such residence)—

"(A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

"(B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

"(C) by modifying the terms and conditions of such loan—

"(i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

"(ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table entitled 'Average Prime Offer Rates—Fixed', plus a reasonable premium for risk; and

"(D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and", and

(2) by adding at the end the following:

"(g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds—

"(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 90 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 70 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 50 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus

costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 30 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

"(5) if such residence is sold in the 5th year occurring after the effective date of the plan, 10 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

"(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

"(1) in a case commenced under this chapter after the expiration of the 30-day period beginning on the effective date of this subsection, unless—

"(A) the debtor certifies that the debtor—

"(i) not less than 30 days before the commencement of the case, contacted the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim;

"(ii) provided the holder of the claim (or the entity collecting payments on behalf of such holder) a written statement of the debtor's current income, expenses, and debt substantially conforming with the schedules required under section 521(a) or such other form as is promulgated by the Judicial Conference of the United States for such purpose; and

"(iii) considered any qualified loan modification offered to the debtor by the holder of the claim (or the entity collecting payments on behalf of such holder); or

"(B) a foreclosure sale is scheduled to occur on a date in the 30-day period beginning on the date the case is commenced;

"(2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before—

"(A) filing a plan under section 1321 that contains a modification under the authority of subsection (b)(11); or

"(B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

"(i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such

residence on the date such value is determined and, if the issue of value is contested, the court shall determine such value in accordance with the appraisal rules used by the Federal Housing Administration.''.

SEC. 9005. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking ''and'' at the end,

(2) in paragraph (2) by striking the period at the end and inserting a semicolon, and

(3) by adding at the end the following:

''(3) the debtor, the debtor's property, and property of the estate are not liable for a fee, cost, or charge that is incurred while the case is pending and arises from a debt that is secured by the debtor's principal residence except to the extent that—

''(A) the holder of the claim for such debt files with the court and serves on the trustee, the debtor, and the debtor's attorney (annually or, in order to permit filing consistent with clause (ii), at such more frequent periodicity as the court determines necessary) notice of such fee, cost, or charge before the earlier of—

''(i) 1 year after such fee, cost, or charge is incurred; or

''(ii) 60 days before the closing of the case; and

''(B) such fee, cost, or charge—

''(i) is lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement; and

''(ii) is secured by property the value of which is greater than the amount of such claim, including such fee, cost, or charge;

''(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) or, if the violation occurs before the date of discharge, of section 362(a); and

''(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.''.

SEC. 9006. CONFIRMATION OF PLAN.

(a) Section 1325(a) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) strike ''subsection (b)'' and insert ''subsections (b) and (d)''.

(2) in paragraph (5)—

(A) by inserting ''except as otherwise provided in section 1322(b)(11),'' after ''(5)'', and

(B) in subparagraph (B)(iii)(I) by inserting ''(including payments of a claim modified under section 1322(b)(11))'' after ''payments'' the 1st place it appears,

(3) in paragraph (8) by striking ''and'' at the end,

(4) in paragraph (9) by striking the period at the end and inserting a semicolon, and

(5) by inserting after paragraph (9) the following:

"(10) notwithstanding subclause (I) of paragraph (5)(B)(i), whenever the plan modifies a claim in accordance with section 1322(b)(11), the holder of a claim whose rights are modified pursuant to section 1322(b)(11) shall retain the lien until the later of—

"(A) the payment of such holder's allowed secured claim; or

"(B) completion of all payments under the plan (or, if applicable, receipt of a discharge under section 1328(b)); and

"(11) whenever the plan modifies a claim in accordance with section 1322(b)(11), the court finds that such modification is in good faith (Lack of good faith exists if the debtor has no need for relief under this paragraph because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a reduction of the principal amount of the loan resulting from a modification made under the authority of section 1322(b)(11) is made in good faith, the court shall consider whether the holder of such claim (or the entity collecting payments on behalf of such holder) has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing such principal amount.) and does not find that the debtor has been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to a modified claim.".

(b) Section 1325 of title 11, United States Code, is amended by adding at the end the following (and make such technical and conforming changes as may be appropriate):

"(d) Notwithstanding section 1322(b)(11)(C)(ii), the court, on request of the debtor or the holder of a claim secured by a senior security interest in the debtor's principal residence, may confirm a plan proposing a reduction in the interest rate on the loan secured by such security interest and that does not reduce the principal, provided the total monthly mortgage payment is reduced to a percentage of the debtor's income in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, if, taking into account the debtor's financial situation, after allowance of expenses that would be permitted for a debtor under this chapter subject to paragraph (3) of subsection (b), regardless of whether the debtor is otherwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in this chapter and thereafter, the debtor would be able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal.".

SEC. 9007. DISCHARGE.

Section 1328(a) of title 11, United States Code, is amended—

(1) by inserting "(other than payments to holders of claims whose rights are modified under section 1322(b)(11))" after "paid", and

(2) in paragraph (1) by inserting "or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)" after "1322(b)(5)".

SEC. 9008. STANDING TRUSTEE FEES.

(a) AMENDMENT TO TITLE 28.—Section 586(e)(1)(B)(i) of title 28, United States Code, is amended—

(1) by inserting "(I) except as provided in subparagraph (II)" after "(i)",

(2) by striking "or" at the end and inserting "and", and

(3) by adding at the end the following:

"(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.".

(b) CONFORMING PROVISION.—The amendments made by this section shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3121) apply.

SEC. 9009. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subtitle shall apply with respect to cases commenced under title 11 of the United States Code before, on, or after the date of the enactment of this Act.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to cases closed under title 11 of the United States Code as of the date of the enactment of this Act that are neither pending on appeal in, nor appealable to, any court of the United States.

SEC. 9010. GAO STUDY.

The Comptroller General shall carry out a study, and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than 2 years after the date of the enactment of this Act a report containing—

(1) the results of such study of—

(A) the number of debtors who filed, during the 1-year period beginning on the date of the enactment of this Act, cases under chapter 13 of title 11 of the United States Code for the purpose of restructuring their principal residence mortgages,

(B) the number of mortgages restructured under the amendments made by this subtitle that subsequently resulted in default and foreclosure,

(C) a comparison between the effectiveness of mortgages restructured under non-judicial voluntary mortgage modi-

fication programs and mortgages restructured under the amendments made by this subtitle,

(D) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were appealed,

(E) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were overturned on appeal, and

(F) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under the amendments made by this subtitle, and

(2) a recommendation as to whether such amendments should be amended to include a sunset clause.

SEC. 9011. REPORT TO CONGRESS.

Not later than 18 months after the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Housing Administration, shall submit to the Congress, a report containing—

(1) a comprehensive review of the effects of the amendments made by this subtitle on bankruptcy courts,

(2) a survey of whether the program should limit the types of homeowners eligible for the program, and

(3) a recommendation on whether such amendments should remain in effect.

Subtitle B—Related Mortgage Modification Provisions

SEC. 9021. ADJUSTMENTS AS A RESULT OF MODIFICATION IN BANKRUPTCY OF HOUSING LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) IN GENERAL.—Section 3732 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraph (2) as subparagraph (A) of paragraph (2), and

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, United States Code, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11, United States Code, plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.".

(b) MATURITY OF HOUSING LOANS.—Paragraph (1) of section (d) of section 3703 of title 38, United States Code, is amended by inserting "at the time of origination" after "loan".

(c) IMPLEMENTATION.—The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

SEC. 9022. PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.

(a) IN GENERAL.—Subsection (a) of section 204 of the National Housing Act (12 U.S.C. 1710(a)) is amended—

(1) in paragraph (1), by adding at the end the following new subparagraph:

"(E) MODIFICATION OF MORTGAGE IN BANKRUPTCY.—

"(i) AUTHORITY.—If an order is entered under the authority provided under section 1322(b) of title 11, United States Code, that (a) determines the amount of an allowed secured claim under a mortgage in accordance with section 506(a)(1) of title 11, United States Code, and the amount of such allowed secured claim is less than the amount due under the mortgage as of the date of the filing of the petition under title 11, United States Code, or (b) reduces the interest to be paid under a mortgage in accordance with section 1325 of such title, the Secretary may pay insurance benefits for the mortgage as follows:

"(I) FULL PAYMENT AND ASSIGNMENT.—The Secretary may pay the insurance benefits for the mortgage, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A). The insurance benefits shall be paid in the amount equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of the filing of by the mortgagor of the petition under title 11 of the United States Code. Nothing in this Act may be construed to prevent the Secretary from providing insurance under this title for a mortgage that has previously been assigned to the Secretary under this subclause. The decision of whether to utilize the authority under this subclause for payment and assignment shall be at the election of the mortgagee, subject to such terms and conditions as the Secretary may establish.

"(II) ASSIGNMENT OF UNSECURED CLAIM.—The Secretary may make a partial payment of the insurance benefits for any unsecured claim under the mortgage, but only upon the assignment to the Secretary of any unsecured claim of the mortgagee against the mortgagor or others arising out of such order. Such assignment shall be deemed valid irrespective of whether such claim has been or will be discharged under title 11 of the United States Code. The insurance benefits shall be paid in the amount specified in subclause (I) of this clause, as such amount is reduced by the amount of the allowed secured claim. Such allowed secured claim shall continue to be insured under section 203.

"(III) INTEREST PAYMENTS.—The Secretary may make periodic payments, or a one-time payment, of insurance benefits for interest payments that are reduced pursuant to such order, as determined by the Secretary, but only upon assignment to the Secretary of all rights and interest related to such payments.

"(ii) DELIVERY OF EVIDENCE OF ENTRY OF ORDER.—Notwithstanding any other provision of this paragraph, no insurance benefits may be paid pursuant to this subparagraph for a mortgage before delivery to the Secretary of evidence of the entry of the order issued pursuant to title 11, United States Code, in a form satisfactory to the Secretary.";

(2) in paragraph (5), in the matter preceding subparagraph (A), by inserting after "section 520, and" the following: ", except as provided in paragraph (1)(E),"; and

(3) by adding at the end the following new paragraph:

"(10) LOAN MODIFICATION PROGRAM.—

"(A) AUTHORITY.—The Secretary may carry out a program solely to encourage loan modifications for eligible delinquent mortgages through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

"(B) PAYMENT OF BENEFITS AND ASSIGNMENT.—Under the program under this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with paragraph (5)(A), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A).

"(C) DISPOSITION.—After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently—

"(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

"(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

"(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

"(D) LOAN SERVICING.—In carrying out the program under this section, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the

program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.".

(b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—Paragraph (1) of section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)(1)) is amended by striking "12 of the monthly mortgage payments" and inserting "30 percent of the unpaid principal balance of the mortgage".

(c) IMPLEMENTATION.—The Secretary of Housing and Urban Development may implement the amendments made by this section through notice or mortgagee letter.

SEC. 9023. ADJUSTMENTS AS RESULT OF MODIFICATION OF RURAL SINGLE FAMILY HOUSING LOANS IN BANKRUPTCY.

(a) GUARANTEED RURAL HOUSING LOANS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) in paragraph (7)—

(A) in subparagraph (A), by inserting before the period at the end the following: ", unless the maturity date of the loan is modified in a bankruptcy proceeding or at the discretion of the Secretary"; and

(B) in subparagraph (B), by inserting before the semicolon the following: ", unless such rate is modified in a bankruptcy proceeding";

(2) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(3) by inserting after paragraph (12) the following new paragraph:

"(13) PAYMENT OF GUARANTEE.—In addition to all other authorities to pay a guarantee claim, the Secretary may also pay the guaranteed portion of any losses incurred by the holder of a note or the servicer resulting from a modification of a note by a bankruptcy proceeding.".

(b) INSURED RURAL HOUSING LOANS.—Subsection (j) of section 517 of the Housing Act of 1949 (42 U.S.C. 1487(j)) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) to pay for losses incurred by holders or servicers in the event of a modification pursuant to a bankruptcy proceeding;".

(c) IMPLEMENTATION.—The Secretary of Agriculture may implement the amendments made by this section through notice, procedure notice, or administrative notice.

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20. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 22, beginning on line 19, strike "orderliness".

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21. An Amendment To Be Offered by Representative Burgess, Michael of Texas or His Designee, Debatable for 10 Minutes

Page 92, line 16, insert the following: "The aforementioned amounts shall be indexed to inflation."

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22. An Amendment To Be Offered by Representative Burgess, Michael of Texas or His Designee, Debatable for 10 Minutes

Page 58, line 4, insert after the period the following new sentence: "The Board shall define by rule or regulation the term 'significantly undercapitalized' at a threshold the Board determines to be prudent for the effective monitoring management and oversight of the financial system.".

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23. An Amendment To Be Offered by Representative Burgess, Michael of Texas or His Designee, Debatable for 10 Minutes

Page 20, line 1, insert after "possible" the following: ", but no later than two (2) years,".

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24. An Amendment To Be Offered by Representative Burgess, Michael of Texas or His Designee, Debatable for 10 Minutes

Page 1185, beginning on line 10, strike "have engaged in information sharing or".

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25. An Amendment To Be Offered by Representative Herseth Sandlin, Stephanie of South Dakota or Her Designee, Debatable for 10 Minutes

Page 1022, line 20, strike "Section" and insert the following:
(a) Exemption.—Section
Page 1024, line 3, strike the period at the end and insert "; and".
Page 1024, after line 3, insert the following:
(b) Consideration of Risk.—Section 203(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c)) is amended by adding at the end the following:

"(3) The Commission shall take into account the relative risk profile of different classes of private funds as it establishes, by rule or regulation, the registration requirements for private funds.".

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26. An Amendment To Be Offered by Representative Garrett, Scott of New Jersey or His Designee, Debatable for 10 Minutes

Page 1041, beginning on line 15, strike paragraph (5) and insert the following:

(5) in subsection (e), by striking paragraph (1) and inserting the following new paragraph (1):

"(1) Voluntary withdrawal.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from

registration by furnishing a written notice of withdrawal to the Commission, provided that such nationally recognized statistical rating organization certifies that it received less than $250,000,000 during its last full fiscal year in net revenue for providing credit ratings on securities and money market instruments issued in the United States.'';

27. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE DENT, CHARLES OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, insert the following new section:

SEC. ____. SENSE OF CONGRESS REGARDING SIMPLIFIED MORTGAGE CONTRACT SUMMARIES.

It is the sense of Congress that mortgage lenders should provide loan applicants with a simplified summary of their loan contracts, including an easy-to-read list of the basic loan terms, payment information, the existence of prepayment penalties or balloon payments, and escrow information.

28. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOORE, DENNIS OF KANSAS OR HIS DESIGNEE DEBATABLE FOR 10 MINUTES

Add at the end the following new title (and update the table of contents accordingly):

TITLE VIII—NONADMITTED AND REINSURANCE REFORM ACT

SECTION 10001. SHORT TITLE.

This title may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2009''.

SEC. 10002. EFFECTIVE DATE.

Except as otherwise specifically provided in this title, this title shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

Subtitle A—Nonadmitted Insurance.

SEC. 10101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.— No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such

date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.— To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 10101 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relat-

ing to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 10101(b) of this title that include alternative nationwide uniform eligibility requirements; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 10105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this subtitle on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this Act;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the findings of the study not later than 30 months after the effective date of this Act.

SEC. 10107. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) ADMITTED INSURER.—The term "admitted insurer" means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term "affiliated group" means any group of entities that are all affiliated.

(4) CONTROL.—An entity has "control" over another entity if—

(A) the entity directly or indirectly or acting through one or more other persons owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least one of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this Act and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "home State" means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term "nonadmitted insurer" means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(12) QUALIFIED RISK MANAGER.—The term "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has one of the following designations:

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any one of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other

State regulatory official or entity to demonstrate minimum competence in risk management.

(13) PREMIUM TAX.—The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) SURPLUS LINES BROKER.—The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(15) STATE.—The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle B—Reinsurance.

SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subtitle; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 10202. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 10203. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CEDING INSURER.—The term “ceding insurer” means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms “State of domicile” and “domiciliary State” means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term “reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term “reinsurer” means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(5) STATE.—The term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Subtitle C—Rule of Construction.

SEC. 10301. RULE OF CONSTRUCTION.

Nothing in this title or amendments to this title shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this title and any amendments to this title and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 10302. SEVERABILITY.

If any section or subsection of this title, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this title, and the application of the provision to any other person or circumstance, shall not be affected.

29. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WITTMAN, ROBERT OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end the following new title (and update the table of contents accordingly):

TITLE VII—BANK LOTTERY PROVISIONS CLARIFICATION ACT

SECTION 9001. SHORT TITLE.

This Act may be cited as the "Bank Lottery Provisions Clarification Act of 2009".

SEC. 9002. AMENDMENTS CLARIFYING APPLICATION OF VARIOUS BANKING LAWS.

(a) REVISED STATUTES.—Subsection (d) of section 5136B of the Revised Statutes of the United States (12 U.S.C. 25a(d)) is amended to read as follows:

"(d) EXCEPTIONS.—No provision of this section shall be construed as prohibiting a national bank from—

"(1) accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery; or

"(2) announcing, advertising, publicizing, or dealing in any lottery where the money or credit obtained in connection with such lottery primarily benefits 1 or more charitable organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.".

(b) FEDERAL RESERVE ACT.—Subsection (d) of section 9A of the Federal Reserve Act (12 U.S.C. 339(d)) is amended to read as follows:

"(d) EXCEPTIONS.—No provision of this section shall be construed as prohibiting a State member bank from—

"(1) accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery; or

"(2) announcing, advertising, publicizing, or dealing in any lottery where the money or credit obtained in connection with such lottery primarily benefits 1 or more charitable organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.".

(c) FEDERAL DEPOSIT INSURANCE ACT.—Subsection (d) of section 20 of the Federal Deposit Insurance Act (12 U.S.C. 1829a(d)) is amended to read as follows:

"(d) EXCEPTIONS.—No provision of this section shall be construed as prohibiting a State nonmember insured bank from—

"(1) accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery; or

"(2) announcing, advertising, publicizing, or dealing in any lottery where the money or credit obtained in connection with such lottery primarily benefits 1 or more charitable organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.".

(d) HOME OWNERS' LOAN ACT.—Paragraph (4) of section 4(e) of the Home Owners' Loan Act (U.S.C. 1463(e)(4)) is amended to read as follows:

"(4) EXCEPTIONS.—No provision of this subsection shall be construed as prohibiting any savings association from—

"(A) accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery; or

"(B) announcing, advertising, publicizing, or dealing in any lottery where the money or credit obtained in connection with such lottery primarily benefits 1 or more charitable organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.".

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30. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINNICK, WALT OF IDAHO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 787, strike line 17 and all that follows through page 788, line 10 and insert the following:

"(C) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES DEFINE.—

(1) UNFAIR ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is unfair must be consistent with the standard set forth under section 5 of the Federal Trade Commission Act and with the December 17, 1980, policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission act.

(2) DECEPTIVE ACTS OR PRACTICES.—Any determination by the Director and the Agency that an act or practice is deceptive must be consistent with the October 14, 1983, policy statement adopted by the Federal Trade Commission pursuant to section 5 of the Federal Trade Commission Act.

(3) ABUSIVE ACTS OR PRACTICES.—The Director and the Agency may determine that an act or practice is abusive only if the Director finds that—

(i) the act or practice is reasonably likely to result in a consumer's inability to understand the terms and conditions of a financial product or service or to protect their own interests in selecting or using a financial product or service; and

(ii) the widespread use of the act or practice is reasonably likely to contribute to instability and greater risk in the financial system.

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31. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARTLETT, ROSCOE OF MARYLAND OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 825, after line 12, insert the following new section:

SEC. 4313. REQUIREMENTS FOR STATE-LICENSED LOAN ORIGINATORS.

Paragraph (2) of section 1505(b) of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5104(b)(2)) is amended by inserting after and below subparagraph (B), the following:

"Notwithstanding the preceding sentence, a State loan originator supervisory authority may provide for review of applicants and for granting exceptions, on a case-by-case basis, to the minimum standard under subparagraph (B), but only to the extent that any such exception otherwise complies with the purposes of this title.".

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32. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHAKOWSKY, JANICE OF ILLINOIS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 825, after line 12, insert the following new section:

SEC. 4413. TREATMENT OF REVERSE MORTGAGES.

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosure to consumers in connection with a reverse mortgage transaction that are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of the enactment of this Act.

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33. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KILROY, MARY JO OF OHIO OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 289, line 10, insert "only" after "Fund".

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34. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MURPHY, SCOTT OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 176, strike lines 12 through 14 (and redesignate remaining paragraphs accordingly).

Add at the end of the bill the following:

TITLE VII—INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED

SEC. 9001. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED.

(a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON DEMAND DEPOSITS.—

(1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is amended to read as follows:

"(i) [Repealed]".

(2) HOME OWNERS' LOAN ACT.—The first sentence of section 5(b)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking "savings association may not—" and all that follows through "(ii) permit any" and inserting "savings association may not permit any".

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended to read as follows:

"(g) [Repealed]".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect at the end of the 1-year period beginning on the date of the enactment of this Act.

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35. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINNICK, WALT OF IDAHO OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

Strike title IV and insert the following:

TITLE IV—CONSUMER FINANCIAL PROTECTION ACT

SECTION 4001. SHORT TITLE.

This title may be cited as the "Consumer Financial Protection Act of 2009".

SEC. 4002. CONSUMER FINANCIAL PROTECTION COUNCIL.

(a) ESTABLISHMENT.—There is hereby established the Consumer Financial Protection Council (hereinafter in this title referred to as the "Council") as an independent establishment of the executive branch, which shall consist of—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Comptroller of the Currency;

(3) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;

(4) the Director of the Office of Thrift Supervision;

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Department of Housing and Urban Development;

(7) the Secretary of the Treasury;

(8) the Chairman of the Securities and Exchange Commission;

(9) the Chairman of the Commodities Futures Trading Commission;

(10) the Chairman of the Federal Trade Commission; and

(11) one individual selected by the State Advisory Committee established under section 4005.

(b) STAFFING.—The Secretary of the Treasury shall provide appropriate staffing for the Council.

SEC. 4003. CONSUMER FINANCIAL PROTECTION SUBCOMMITTEE.

(a) ESTABLISHMENT.—There is hereby established within the Council the Consumer Financial Protection Subcommittee (hereinafter in this title referred to as the "CFPS"), which shall consist of the members of the Council.

(b) PURPOSE.—The purpose of the CFPS is to ensure that all providers of a financial product or service to consumers are subject to meaningful and uniform consumer protection requirements, and that functionally equivalent products are subject to equivalent consumer protection standards.

(c) CHAIRMANSHIP.—

(1) INITIAL CHAIRMAN.—The Chairman of the Federal Trade Commission shall serve as the Chairman of the CFPS for the 2-year period beginning on the date of the enactment of this title.

(2) SUBSEQUENT SELECTION.—After the 2-year period described under paragraph (1), the President shall appoint the Chairman of the CFPS from among the members of the CFPS. The term of the Chairmanship shall be 2 years.

(d) VOTING.—Decisions of the CFPS shall be made by a majority vote of the members of the CFPS.

(e) DUTIES.—The CFPS shall review existing consumer protection regulations and issue new or revised regulations where needed to prevent unfair or deceptive practices.

(f) PROCEDURES FOR PROPOSING AND ISSUING REGULATIONS.—

(1) PROPOSAL.—Any member of the CFPS may propose that the CFPS consider the need for the modification of an existing regulation or for the issuing of a new regulation with respect to a particular consumer financial product or service. After such proposal is made, the CFPS shall develop an analysis of the proposal and prepare a report that either—

(A) recommends that no action be taken; or

(B) recommends the modification of existing regulations or the issuing of new regulations.

(2) PUBLICATION.—With respect to a report prepared under paragraph (1)—

(A) if the CFPS recommends that no action be taken, the CFPS shall make a copy of the report publicly available; and

(B) if the CFPS recommends the modification of existing regulations or the issuing of new regulations, the CFPS shall publish such report in the Federal Register and solicit public comments on such recommendation, pursuant to the Administrative Procedure Act.

(3) MODIFICATION OR ACCEPTANCE.—With respect to each recommendation described under paragraph (2)(B) for the modification of existing regulations or the issuing of new regulations, after the CFPS has considered the public comments on such recommendation, the CFPS shall vote on whether such recommendations should be withdrawn, modified, or published as a final regulation.

(4) REGULATIONS ISSUED BY CFPS CONTROL.—Notwithstanding any other provision of law, to the extent that any other regulation conflicts with a regulation issued by the CFPS under this subsection, such other regulation shall have no force or effect to the extent of such conflict.

(5) PROPOSALS BY STATE ADVISORY COMMITTEE.—

(A) IN GENERAL.—Any proposal made under paragraph (1) by the member of the CFPS selected by the State Advisory Committee shall be accompanied by a certification from such member stating that more than half of the States support such proposal.

(B) METHOD OF DETERMINATION.—For purposes of this paragraph, the State Advisory Committee shall determine the method for determining if a State supports a proposal.

(6) REPORT ON APPROVAL OR OPPOSITION.—Each member of the CFPS shall issue an annual report to the Congress containing a detailed explanation, for each proposal made under paragraph (1), why such member supported or opposed such proposal.

(7) PROCEDURES TO BE APPLIED TO ALL RULEMAKINGS.—The procedures under this subsection shall be used by the CFPS when issuing any regulation under the authority of this title.

(g) CONSUMER FINANCIAL PRODUCTS OR SERVICES EXPRESSLY PERMITTED BY STATE OR FEDERAL LAW.—

(1) VOTING REQUIREMENTS.—Any votes taken by the CFPS to prevent the offering of any consumer financial product or service that is expressly permitted by State or Federal law shall only be agreed to by a two-thirds vote.

(2) RECOMMENDATIONS TO THE CONGRESS.—If the CFPS determines a need to prevent the offering of any consumer financial product or service expressly permitted by State or Federal law, the CFPS shall issue a report to the Congress containing such determination and including—

(A) a description of the specific financial product or service that the CFPS is recommending the Congress should prevent from being offered;

(B) an estimate of the amount of credit provided by and the number of consumers using any such financial product or service;

(C) a list of any States which have expressly permitted any such financial product or service;

(D) the identities of persons known by the CFPS to be offering any such financial product or service;

(E) an analysis of whether there are ample other alternative reasonably priced financial products or services available to meet consumers' credit needs, and a description of such alternative financial products or services; and

(F) the basis and reasoning on which the CFPS has based its recommendation.

(3) DEFINITION.—For purposes of this subsection, the term "prevent the offering of any consumer financial product or service" shall mean taking any action that could reasonably result in the direct or indirect prohibition of, or materially interfere with the ability of any person to offer, any consumer financial product or service.

SEC. 4004. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended by inserting after "established" the following: "as a subcommittee within the Consumer Financial Protection Council".

SEC. 4005. STATE ADVISORY COMMITTEE.

There is hereby established within the Council the State Advisory Committee, which shall consist of one representative from each of the following:

(1) The Conference of State Bank Supervisors.

(2) The American Council of State Savings Supervisors.

(3) The National Association of State Credit Union Supervisors.

SEC. 4006. EQUALITY OF CONSUMER PROTECTION ENFORCEMENT RESPONSIBILITIES.

With respect to each consumer protection agency, the enforcement of the provisions of the consumer protection laws under such agency's jurisdiction shall be of equal importance to such agency as the enforcement of the provisions of other laws under such agency's jurisdiction.

SEC. 4007. DIRECTOR OF THE CONSUMER FINANCIAL PROTECTION DIVISION.

(a) ESTABLISHMENT.—There is hereby established within each consumer protection agency a position of Director of the Consumer Financial Protection Division.

(b) COMPENSATION.—With respect to a consumer protection agency, the Director of the Consumer Financial Protection Division

shall be compensated in an amount no less than the amount of compensation provided to the head of other subdivisions of such agency of a comparable size.

(c) DIRECT REPORTING.—Each Director of the Consumer Financial Protection Division established under subsection (a) shall report directly to the head of the agency within which such Director is located.

(d) ANNUAL REPORT TO THE CONGRESS.—Each consumer protection agency shall issue an annual report to the Congress detailing the activities of the Director of the Consumer Financial Protection Division and how such activities advanced the agency's consumer protection functions.

SEC. 4008. PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES.

(a) IN GENERAL.—Each consumer protection agency may prevent a person from committing or engaging in an unfair or deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(b) RULEMAKING.—Each consumer protection agency may prescribe regulations identifying as unlawful, unfair, or deceptive acts or practices in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(c) REFERRAL TO CFPS.—With respect to each regulation issued pursuant to subsection (b), the consumer protection agency issuing such regulation shall propose such regulation to the CFPS under section 4003(f), unless the CFPS already has a substantially similar proposal under consideration.

(d) UNFAIRNESS.—

(1) IN GENERAL.—A consumer protection agency shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service to be unlawful on the grounds that such act or practice is unfair unless such agency has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) EXISTING PUBLISHED GUIDELINES AS FACTOR.—In determining whether an act or practice is unfair, a consumer protection agency shall consider established public policies and regulations, interpretations, guidance, and staff commentaries issued by the consumer protection agencies under the consumer protection laws they enforce.

(e) DEFINITIONS.—For purposes of this section, the terms "unfair" and "deceptive" shall have the meanings given such terms under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

SEC. 4009. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR OR DECEPTIVE PRACTICES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The consumer protection agencies shall prescribe standards applicable to covered persons to deter and detect unfair or deceptive acts or practices in the

provision of consumer financial products or services under such agency's jurisdiction, including standards for—

(1) background checks for principals, officers, directors, or key personnel of the covered person;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of the ability of the covered person to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; and

(5) procedures and operations of the covered person relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) CFPS AUTHORITY TO ISSUE REGULATIONS.—The CFPS may issue regulations establishing minimum standards under this section for any class of covered persons.

(c) EXCEPTION FOR ENFORCEMENT OF GRAMM-LEACH-BLILEY PRIVACY LAWS AGAINST INSURERS.—Neither the consumer protection agencies nor the CFPS shall have authority to issue or enforce regulations with respect to authorities that are granted to State insurance regulators under section 505(a)(6) of the Gramm-Leach-Bliley Act.

SEC. 4010. PRESUMPTION OF ABILITY TO REPAY.

(a) PROHIBITION ON RESIDENTIAL MORTGAGE LOANS THAT WON'T REASONABLY BE REPAID.—

(1) IN GENERAL.—No creditor shall make a residential mortgage loan unless it has a reasonable basis for determining that the consumer can repay the loan.

(2) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

(b) EXEMPTION FOR CERTAIN MODEL TERMS AND CONDITIONS.—Subsection (a) shall not apply to residential mortgage loans containing the model terms and conditions contained in regulations issued by the Council under subsection (c).

(c) PROCEDURE FOR ADOPTING MODEL TERMS AND CONDITIONS.—

(1) IN GENERAL.—Not later than 1 years after the date of the enactment of this title, the Council shall issue regulations containing model terms and conditions for residential mortgage loans, for purposes of subsection (b).

(2) VOTING.—The Council may only issue a regulation under paragraph (1)—

(A) by a majority vote of the Council's members; and

(B) in a vote where each member of the Council casts a vote.

(3) REVISION OF MODEL TERMS AND CONDITIONS.—The Council shall update regulations issued under this subsection from time to time as appropriate.

(4) RULEMAKING PROCEDURES.—In issuing any regulation under this subsection, the Council shall, to the extent prac-

ticable, follow the procedures set forth under section 4003(f) for the consideration of proposals by the CFPS.

(d) ENFORCEMENT.—The prohibition under subsection (a) shall be enforced by each member of the Council with jurisdiction over the provision of residential mortgage loans.

SEC. 4011. EXAMINATIONS BY CONSUMER PROTECTION AGENCIES.

(a) IN GENERAL.—Each consumer protection agency shall carry out regular examinations of covered persons regulated by such agency.

(b) SCOPE OF EXAMINATIONS.—Examinations carried out pursuant to subsection (a) shall be comparable to those examinations carried out by the Federal banking agencies of insured depository institutions.

SEC. 4012. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to regulations prescribed by the consumer protection agencies, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account, including charges and usage data.

(b) EXCEPTIONS.—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—No provision of this section shall be construed as imposing any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The consumer protection agencies, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

SEC. 4013. PROHIBITED ACTS.

It shall be unlawful for any person to—

(1) advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee or charge in connection with a consumer financial product or service that is not in conformity with this title and applicable regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council;

(2) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information to a consumer protection agency, the CFPS, or the Council, as required by this title, a consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority; or

(3) knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4008, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 4014. STATE ATTORNEYS GENERAL RIGHT TO SUE.

No provision of this title shall be construed to limit the applicability or the effect of the decision of the Supreme Court in Cuomo v. Clearing House Assn., L.L.C., 557 U.S. ______ (2009).

SEC. 4015. ENFORCEMENT.

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms "civil investigative demand" and "demand" mean any demand issued by a consumer protection agency.

(2) CONSUMER PROTECTION AGENCY.—The term "consumer protection agency" means—

(A) the appropriate Federal banking agency (as such term is defined in section 3(q) of the Federal Deposit Insurance Act), with respect to entities regulated by the appropriate Federal banking agencies;

(B) the National Credit Union Administration, with respect to a credit union;

(C) the Securities and Exchange Commission, with respect to an entity regulated by such Commission;

(D) the Commodity Futures Trading Commission, with respect to an entity regulated by such Commission; and

(E) the Federal Trade Commission, with respect to any entity not regulated by the appropriate Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission.

(3) CONSUMER PROTECTION AGENCY INVESTIGATION.—The term "consumer protection agency investigation" means any inquiry conducted by a consumer protection agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any consumer protection law, or any regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council under this title.

(4) CONSUMER PROTECTION AGENCY INVESTIGATOR.—The term "consumer protection agency investigator" means any attorney or investigator employed by a consumer protection agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any consumer protection law, or any

regulation prescribed or order issued under this title or pursuant to any such authority by the consumer protection agency, the CFPS, or the Council.

(5) CUSTODIAN.—The term "custodian" means the custodian or any deputy custodian designated by a consumer protection agency.

(6) DOCUMENTARY MATERIAL.—The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(7) VIOLATION.—The term "violation" means any act or omission that, if proved, would constitute a violation of any provision of this title, any consumer protection law, or of any regulation prescribed or order issued by a consumer protection agency, the CFPS, of the Council under this title or pursuant to any such authority.

(b) INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.—

(1) SUBPOENAS.—

(A) IN GENERAL.—A consumer protection agency or a consumer protection agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(B) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by a consumer protection agency or a consumer protection agency investigator and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(C) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(2) DEMANDS.—

(A) IN GENERAL.—Whenever a consumer protection agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, a consumer protection agency may, before the institution of any proceedings under this title or under any consumer protection law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(i) produce such documentary material for inspection and copying or reproduction;

(ii) submit such tangible things;

(iii) file written reports or answers to questions;

(iv) give oral testimony concerning documentary material or other information; or

(v) furnish any combination of such material, answers, or testimony.

(B) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(C) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(i) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(iii) identify the custodian to whom such material shall be made available.

(D) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(i) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(iii) identify the custodian to whom such things shall be submitted.

(E) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(i) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(ii) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(iii) identify the custodian to whom such reports or answers shall be submitted.

(F) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

(ii) identify a consumer protection agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(G) SERVICE.—

(i) Any civil investigative demand may be served by any consumer protection agency investigator at any place within the territorial jurisdiction of any court of the United States.

(ii) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction

of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(iii) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(H) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(i) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(ii) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(iii) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(I) PROOF OF SERVICE.—

(i) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(ii) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(J) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(K) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible

things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(L) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(M) TESTIMONY.—

(i) PROCEDURE.—

(I) OATH AND RECORDATION.—Any consumer protection agency investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness.

(II) TRANSCRIPTIONS.—The testimony shall be taken stenographically and transcribed.

(III) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the consumer protection agency investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(ii) PARTIES PRESENT.—Any consumer protection agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his or her attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(iii) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the consumer protection agency investigator before whom the oral testimony of such person is to be taken and such person.

(iv) ATTORNEY REPRESENTATION.—

(I) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(II) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the ini-

tiative of the attorney, with respect to any question asked of such person.

(III) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(IV) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(V) PETITION FOR ORDER.—If such person refuses to answer any question, a consumer protection agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(VI) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(v) TRANSCRIPTS.—

(I) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the consumer protection agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(II) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(III) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the consumer protection agency investigator with a statement of the reasons given by the witness for making such changes.

(IV) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(V) CONSUMER PROTECTION AGENCY ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the consumer protection agency investigator shall sign the transcript and state on the record the fact

of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(vi) CERTIFICATION BY INVESTIGATOR.—The consumer protection agency investigator shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the consumer protection agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(vii) COPY OF TRANSCRIPT.—The consumer protection agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the consumer protection agency may for good cause limit such witness to inspection of the official transcript of his testimony.

(viii) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(3) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(A) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the consumer protection agency.

(B) DISCLOSURE TO CONGRESS.—No regulation established by a consumer protection agency regarding the confidentiality of materials submitted to, or otherwise obtained by, the consumer protection agency shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the consumer protection agency may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the consumer protection agency and has designated such material as confidential.

(4) PETITION FOR ENFORCEMENT.—

(A) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the consumer protection agency, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(B) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(5) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(A) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any consumer protection agency investigator named in the demand, such person may file with the consumer protection agency a petition for an order by the consumer protection agency modifying or setting aside the demand.

(B) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the consumer protection agency, shall not run during the pendency of such petition at the consumer protection agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(C) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(6) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the consumer protection agency.

(7) JURISDICTION OF COURT.—

(A) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(B) APPEAL.—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

(c) HEARINGS AND ADJUDICATION PROCEEDINGS.—

(1) IN GENERAL.—A consumer protection agency may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(A) the provisions of this title, including any regulations prescribed by the consumer protection agency under this title; and

(B) any other Federal law that the consumer protection agency is authorized to enforce, including a consumer protection law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the consumer protection agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(2) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(A) ISSUANCE.—

(i) NOTICE OF CHARGES.—If, in the opinion of a consumer protection agency, any covered person is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the consumer protection agency, the consumer protection agency may issue and serve upon the person a notice of charges with respect to such violation.

(ii) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(iii) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the consumer protection agency at the request of any party so served.

(iv) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(v) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the consumer protection agency shall find that any violation specified in the notice of charges has been established, the consumer protection agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(vi) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(B) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the consumer protection agency or a reviewing court.

(C) DECISION AND APPEAL.—

(i) PLACE OF AND PROCEDURES FOR HEARING.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(ii) TIME LIMIT FOR DECISION.—After such hearing, and within 90 days after the consumer protection agency has notified the parties that the case has been submitted to it for final decision, the consumer protection agency shall—

(I) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(II) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(iii) MODIFICATION OF ORDER GENERALLY.—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (D), and thereafter until the record in the proceeding has been filed as so provided, the consumer protection agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(iv) MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.—Upon such filing of the record, the consumer protection agency may modify, terminate, or set aside any such order with permission of the court.

(D) APPEAL TO COURT OF APPEALS.—

(i) IN GENERAL.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the consumer protection agency be modified, terminated, or set aside.

(ii) TRANSMITTAL OF COPY TO THE CONSUMER PROTECTION AGENCY.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the consumer protection agency, and thereupon the consumer protection agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(iii) JURISDICTION OF COURT.—Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as otherwise

provided be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the consumer protection agency.

(iv) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code.

(v) FINALITY.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(E) NO STAY.—The commencement of proceedings for judicial review under subparagraph (D) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(3) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(A) ISSUANCE.—

(i) IN GENERAL.—Whenever the consumer protection agency determines that the violation specified in the notice of charges served upon a person pursuant to paragraph (2), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to paragraph (2), the consumer protection agency may issue a temporary order requiring the covered person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(ii) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this section.

(iii) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the consumer protection agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(B) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the covered person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under paragraph (2), and such court shall have jurisdiction to issue such injunction.

(C) INCOMPLETE OR INACCURATE RECORDS.—

(i) TEMPORARY ORDER.—If a notice of charges served under paragraph (2) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the consumer protection agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the consumer protection agency may issue a temporary order requiring—

(I) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(II) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under paragraph(2)(A).

(ii) EFFECTIVE PERIOD.—Any temporary order issued under clause (i)—

(I) shall take effect upon service; and

(II) unless set aside, limited, or suspended by a court in proceedings under subparagraph (B), shall remain in effect and enforceable until the earlier of—

(aa) the completion of the proceeding initiated under paragraph (2) in connection with the notice of charges; or

(bb) the date the consumer protection agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(4) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—The consumer protection agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the covered person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(B) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(5) REGULATIONS.—The consumer protection agencies shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(d) LITIGATION AUTHORITY.—

(1) IN GENERAL.—If any person violates a provision of this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority,

a consumer protection agency may commence a civil action against such person to impose a civil penalty or to seek all appropriate legal or equitable relief including a permanent or temporary injunction as permitted by law.

(2) REPRESENTATION.—A consumer protection agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the consumer protection agency is a party.

(3) COMPROMISE OF ACTIONS.—A consumer protection agency may compromise or settle any action if such compromise is approved by the court.

(4) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this title, any consumer protection law or any regulation thereunder, a consumer protection agency shall notify the Attorney General.

(5) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a State in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority.

(6) TIME FOR BRINGING ACTION.—

(A) IN GENERAL.—Except as otherwise permitted by law, no action may be brought under this title more than 3 years after the violation to which an action relates.

(B) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(i) For purposes of this subsection, an action arising under this title shall not include claims arising solely under consumer protection laws.

(ii) In any action arising solely under a consumer protection law, a consumer protection agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(e) RELIEF AVAILABLE.—

(1) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(A) JURISDICTION.—The court (or consumer protection agency, as the case may be) in an action or adjudication proceeding brought under this title or any consumer protection law shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title or any consumer protection law, including a violation of a regulation prescribed or order issued under this title or any consumer protection law.

(B) RELIEF.—Such relief may include—

(i) rescission or reformation of contracts;

(ii) refund of moneys or return of real property;

(iii) restitution;

(iv) compensation for unjust enrichment;

(v) payment of damages;

(vi) public notification regarding the violation, including the costs of notification;

(vii) limits on the activities or functions of the person; and

(viii) civil money penalties, as set forth more fully in paragraph (4).

(C) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this paragraph shall be construed as authorizing the imposition of exemplary or punitive damages.

(2) RECOVERY OF COSTS.—In any action brought by a consumer protection agency to enforce any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority, a consumer protection agency may recover its costs in connection with prosecuting such action if the consumer protection agency is the prevailing party in the action.

(3) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(A) Any person that violates any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title shall forfeit and pay a civil penalty pursuant to this paragraph determined as follows:

(i) FIRST TIER.—For any violation of a final order or condition imposed in writing by a consumer protection agency, a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(ii) SECOND TIER.—Notwithstanding clause (i), for any person that knowingly violates this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.

(B) MITIGATING FACTORS.—In determining the amount of any penalty assessed under subparagraph (A), the consumer protection agency or the court shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the person charged;

(ii) the gravity of the violation;

(iii) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(iv) the history of previous violations; and

(v) such other matters as justice may require.

(C) AUTHORITY TO MODIFY OR REMIT PENALTY.—The consumer protection agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under subparagraph (A). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted

from any sums owing by the United States to the person charged.

(D) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council, unless—

(i) the consumer protection agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(ii) the appropriate court has ordered such assessment and entered judgment in favor of the consumer protection agency.

(f) REFERRALS FOR CRIMINAL PROCEEDINGS.—Whenever a consumer protection agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the consumer protection agency shall have the power to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the consumer protection agency to disclose information.

(g) EMPLOYEE PROTECTION.—

(1) IN GENERAL.—No person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a consumer protection agency, the CFPS, or the Council, filed, instituted or caused to be filed or instituted any proceeding under this title, any consumer protection law, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title.

(2) CONSUMER PROTECTION AGENCY REVIEW OF TERMINATION.—

(A) APPLICATION FOR REVIEW.—Any employee or representative of employees who believes that he has been terminated or otherwise discriminated against by any person in violation of paragraph (1) may, within 45 days after such alleged violated occurs, apply to a consumer protection agency for review of such termination or alleged discrimination.

(B) COPY TO RESPONDENT.—A copy of the application shall be sent to the person who is alleged to have terminated or otherwise discriminated against an employee, and such person shall be the respondent.

(C) INVESTIGATION.—Upon receipt of such application, the consumer protection agency shall cause such investigation to be made as the consumer protection agency deems appropriate.

(D) HEARING.—Any investigation under this paragraph shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation.

(E) NOTICE OF TIME AND PLACE FOR HEARING.—The parties shall be given written notice of the time and place of the hearing at least 5 days prior to the hearing.

(F) PROCEDURE.—Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5, United States Code.

(G) DETERMINATION.—

(i) IN GENERAL.—Upon receiving the report of such investigation, the consumer protection agency shall make findings of fact.

(ii) ISSUANCE OF DECISION.—If the consumer protection agency finds that there is sufficient evidence in the record to conclude that such a violation did occur, the consumer protection agency shall issue a decision, incorporating an order therein and the consumer protection agency's findings, requiring the party committing such violation to take such affirmative action to abate the violation as the consumer protection agency deems appropriate, including reinstating or rehiring the employee or representative of employees to the former position with compensation.

(iii) DENIAL OF APPLICATION.—If the consumer protection agency finds insufficient evidence to support the allegations made in the application, the consumer protection agency shall deny the application.

(H) JUDICIAL REVIEW.—An order issued by the consumer protection agency under this paragraph (2) shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this title or any consumer protection law.

(3) COSTS AND EXPENSES.—Whenever an order is issued under this subsection to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) determined by the consumer protection agency to have been reasonably incurred by the applicant for, or in connection with, the application and prosecution of such proceedings shall be assessed against the person committing such violation.

(4) EXCEPTION.—This subsection shall not apply to any employee who acting without discretion from the employer of such employee (or the employer's agent) deliberately violates any requirement of this title or any consumer protection law.

(h) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Council and the CFPS shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in

any subparagraph of section 4018(15) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under section 4018(6).

(3) PRESERVATION OF CERTAIN AUTHORITIES.—Nothing in this title shall be construed as limiting the authority of the Council or the CFPS from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

SEC. 4016. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geocoded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the a Federal banking agency, in accordance with rules prescribed by the Federal banking agencies.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be

made available to the public, upon request, in the form required under rules prescribed by the Federal banking agencies.

(d) FEDERAL BANKING AGENCY USE.—The Federal banking agencies—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Federal banking agencies shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Federal banking agencies shall prescribe regulations regarding the provision of data compiled under this section to such agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) DEFINITIONS.—For purposes of this section, and notwithstanding section 4018, the following definitions shall apply:

(1) CREDIT UNION.—The term "credit union" means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(2) DEPOSIT ACCOUNT.—The term "deposit account" includes any checking account, savings account, credit union share account, and other type of account as defined by the consumer protection agencies.

(3) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term "Federal banking agencies" means all of those agencies.

(4) FINANCIAL INSTITUTION.—The term "financial institution"—

(A) has the meaning given to the term "insured depository institution" in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

SEC. 4017. CONFIDENTIALITY.

The Council, the Financial Institutions Examination Council, the CFPS, and the consumer protection agencies shall each issue regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of such entity's authorities under this title. Such regulations shall, to the extent practicable, mirror the provisions provided for the confidential treatment of financial records under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

SEC. 4018. DEFINITIONS.

For purposes of this title:

(1) AFFILIATE.—The term "affiliate" means any person that controls, is controlled by, or is under common control with another person.

(2) BOARD OF GOVERNORS.—The term "Board of Governors" means the Board of Governors of the Federal Reserve System.

(3) CFPS.—The term "CFPS" means the Consumer Financial Protection Subcommittee established under section 4003.

(4) CONSUMER.—The term "consumer" means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term "consumer financial product or service" means any financial product or service to be used by a consumer primarily for personal, family, or household purposes.

(6) CONSUMER PROTECTION LAWS.—The term "consumer protection laws" means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.)

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e), 624, and 628.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(I) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(J) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(K) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(L) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(7) CONSUMER PROTECTION AGENCY.—Except as provided in section 4015, the term "consumer protection agency" means—

(A) the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Trade Commission;

(F) the National Credit Union Administration;

(G) the Department of the Treasury;

(H) the Department of Housing and Urban Development;

(I) the Securities and Exchange Commission; and

(J) the Commodity Futures Trading Commission.

(8) COUNCIL.—The term "council" means the Consumer Financial Protection Council established under section 2.

(9) COVERED PERSON.—

(A) IN GENERAL.—The term "covered person" means—

(i) any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service; or

(ii) any person who, in connection with the provision of a consumer financial product or service, provides a material service to, or processes a transaction on behalf of, a person described in subparagraph (A).

(B) EXCEPTION.—The term "covered person" does not include a person regulated by a State insurance regulator.

(10) CREDIT.—The term "credit" means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(11) CREDIT UNION.—The term "credit union" means a Federal credit union, State credit union, or State-chartered credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(12) DEPOSIT.—The term "deposit"—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) DEPOSIT-TAKING ACTIVITY.—The term "deposit-taking activity" means—

(A) the acceptance of deposits, the provision of other services related to the acceptance of deposits, or the maintenance of deposit accounts;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members' share accounts by a credit union; or

(C) the receipt of money or its equivalent, as a consumer protection agency may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

For the purposes of this title, the consumer protection agencies may determine that the term "deposit-taking activity" includes the receipt of money or its equivalent in connection with the sale or issuance of any payment instrument or stored value product or service.

(14) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term "Federal banking agencies" means all of those agencies.

(15) FINANCIAL ACTIVITY.—The term "financial activity" means any of the following activities:

(A) Deposit-taking activities.

(B) Extending credit and servicing loans, including—

(i) acquiring, brokering, or servicing loans or other extensions of credit;

(ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property and selling or servicing credit insurance or mortgage insurance.

(C) Check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

(ii) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(D) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(E) Collection of debt related to any consumer financial product or service.

(F) Providing real estate settlement services, including providing title insurance.

(G) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(i) the lease is on a non-operating basis;

(ii) the initial term of the lease is at least 90 days; and

(iii) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the consumer protection agencies.

(H) Acting as an investment adviser to any person (not subject to regulation by or required to register with the Commodity Futures Trading Commission or the Securities and Exchange Commission).

(I) Acting as financial adviser to any person, including—

(i) providing financial and other related advisory services;

(ii) providing educational courses, and instructional materials to consumers on individual financial management matters; or

(iii) providing credit counseling, tax-planning or tax-preparation services to any person.

(J) Financial data processing, including providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or databases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic; and

(ii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general

purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(K) Money transmitting.

(L) Sale or issuance of stored value.

(M) Acting as a money services business.

(N) Acting as a custodian of money or any financial instrument.

(O) Any other activity that the consumer protection agencies define, by regulation, as a financial activity for the purposes of this title.

(P) Except that the term "financial activity" shall not include the business of insurance.

(16) FINANCIAL PRODUCT OR SERVICE.—The term "financial product or service" means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(17) FOREIGN EXCHANGE.—The term "foreign exchange" means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(18) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(19) MONEY SERVICES BUSINESS.—The term "money services business" means a covered person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(20) MONEY TRANSMITTING.—The term "money transmitting" means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(21) PAYMENT INSTRUMENT.—The term "payment instrument" means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(22) PERSON.—The term "person" means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(23) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term "person regulated by a State insurance regulator" means any person who is—

(A) engaged in the business of insurance; and

(B) subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(24) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term "person regulated by the Commodity Futures Trading Commission" means any futures commission merchant, commodity trading adviser, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, but only to the extent that the person acts in such capacity.

(25) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term "person regulated by the Securities and Exchange Commission" means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is required to be registered under the Investment Advisers Act of 1940; or

(C) an investment company that is required to be registered under the Investment Company Act of 1940—

but only to the extent that the person acts in a registered capacity.

(26) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term "provision of (or providing) a consumer financial product or service" means the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(27) RESIDENTIAL MORTGAGE LOAN.—The term "residential mortgage loan" shall have the meaning given such term in section 1503(8) of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(28) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(29) STATE.—The term "State" means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(30) STORED VALUE.—The term "stored value" means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

SEC. 4019. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as may be necessary to carry out this title.

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36. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BACHUS, SPENCER OF ALABAMA OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Strike all after the enacting clause and insert the following:

SEC. 1. SHORT TITLE.

This Act may be cited as the "Consumer and Taxpayer Protection Act of 2009".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—NO MORE BAILOUTS ACT

Sec. 1001. Short title.
Sec. 1002. Amendments to title 28 of the United States Code.
Sec. 1003. Amendments to title 11 of the United States Code.
Sec. 1004. Effective date; application of amendments.
Sec. 1005. Reforms of section 13 emergency powers.
Sec. 1006. Establishment of Market Stability and Capital Adequacy Board.
Sec. 1007. Functions of Board.
Sec. 1008. Powers of Board.
Sec. 1009. Responsibilities of Federal functional regulators.
Sec. 1010. Staff of Board.
Sec. 1011. Compensation and travel expenses.

TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL

Sec. 2001. Short title.
Sec. 2002. Definitions.
Sec. 2003. Financial Institutions Consumer Protection and Examination Council.
Sec. 2004. Office of consumer protection.
Sec. 2005. State enforcement authority.
Sec. 2006. Unfair or deceptive acts or practices authority transferred.
Sec. 2007. Equality of consumer protection functions; Consumer protection divisions.
Sec. 2008. Prohibition on charter conversions while under regulatory sanction.

TITLE III—ANTI-FRAUD PROVISIONS

Sec. 3001. Authority to impose civil penalties in cease and desist proceedings.
Sec. 3002. Formerly associated persons.
Sec. 3003. Collateral bars.
Sec. 3004. Unlawful margin lending.
Sec. 3005. Nationwide service of process.
Sec. 3006. Reauthorization of the Financial Crimes Enforcement Network.
Sec. 3007. Fair fund improvements.

TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

Sec. 4001. Short title.

Subtitle A—Amendments to the Commodity Exchange Act

Sec. 4100. Definitions.
Sec. 4101. Swap repositories.
Sec. 4102. Margin for swaps between swaps dealers and major swap participants.
Sec. 4103. Segregation of assets held as collateral in swap transactions.

Subtitle B—Amendments to the Securities Exchange Act of 1934

Sec. 4201. Definitions.
Sec. 4202. Swap repositories.
Sec. 4203. Margin requirements.
Sec. 4204. Segregation of assets held as collateral in swap transactions.

Subtitle C—Common Provisions

Sec. 4301. Report to the congress.
Sec. 4302. Capital requirements.
Sec. 4303. Centralized clearing.
Sec. 4304. Definitions.

TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

Sec. 5001. Short title.

Sec. 5002. Shareholder vote on executive compensation.
Sec. 5003. Compensation committee independence.

TITLE VI—CREDIT RATING AGENCIES

Sec. 6001. Changes to designation.
Sec. 6002. Removal of statutory references to credit ratings.
Sec. 6003. Review of reliance on ratings.

TITLE VII—GOVERNMENT-SPONSORED ENTERPRISES REFORM

Sec. 7001. Short title.
Sec. 7002. Definitions.
Sec. 7003. Termination of current conservatorship.
Sec. 7004. Limitation of enterprise authority upon emergence from conservatorship.
Sec. 7005. Requirement to periodically renew charter until wind down and dissolution.
Sec. 7006. Required wind down of operations and dissolution of enterprise.

TITLE VIII—FEDERAL INSURANCE OFFICE

Sec. 8001. Short title.
Sec. 8002. Federal Insurance Office established.
Sec. 8003. Report on global reinsurance market.
Sec. 8004. Study on modernization and improvement of insurance regulation in the United States.

TITLE I—NO MORE BAILOUTS ACT

SEC. 1001. SHORT TITLE.

This title may be cited as the "No More Bailouts Act of 2009".

SEC. 1002. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28 of the United States Code is amended—

(1) in section 1408 by striking "section 1410" and inserting "sections 1409A and 1410",

(2) by inserting after section 1409 the following:

"§ 1409A. Venue of cases involving non-bank financial institutions

"A case under chapter 14 may be commenced in the district court of the United States for the district—

"(1) in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary, if a Federal Reserve Bank is located in that district;

"(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal Reserve district in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary; or

"(3) if venue does not exist under paragraph (1) or (2), in which there is a Federal Reserve Bank and in a Federal circuit adjacent to the Federal circuit in which the debtor has its principal place of business or principal assets in the United States.", and

(3) by amending the table of sections of chapter 87 of such title to insert after the item relating to section 1408 the following:

"1409A. Venue of cases involving non-bank financial institutions.".

SEC. 1003. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:

"(26A) The term 'functional regulator' means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.",

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,

(3) by inserting after paragraph (38) the following:

"(38A) the term 'Market Stability and Capital Adequacy Board' means the entity established in section 1006 of the No More Bailouts Act of 2009.", and

(4) by inserting after paragraph (40) the following:

"(40A) The term 'non-bank financial institution' means an institution the business of which is engaging in financial activities that is not an insured depository institution.".

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a) by striking "13" and inserting "13, and 14",

(2) by redesignating subsection (k) as subsection (l), and

(3) by inserting after subsection (j) the following:

"(k) Chapter 14 applies only in a case under such chapter.".

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2) by striking "or" at the end,

(B) in paragraph (3) by striking the period at the end and insert and inserting "; or", and

(C) by adding at the end the following:

"(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title.",

(2) in subsection (d) by striking "or commodity broker" and inserting ", commodity broker, or a non-bank financial institution", and

(3) by adding at the end the following:

"(i) Only a non-bank financial institution may be a debtor under chapter 14 of this title.".

(d) INVOLUNTARY CASES.—Section 303 of title 11, the United States Code, is amended—

(1) in subsection (a) by striking "or 11" and inserting ", 11, or 14", and

(2) in subsection (b) by striking "or 11" and inserting ", 11, or 14".

(e) OBTAINING CREDIT.—Section 364 of title 11, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States.".

(f) CHAPTER 14.—Title 11, United States Code, is amended—

(1) by inserting the following after chapter 13:

“CHAPTER 14—ADJUSTMENT TO THE DEBTS OF A NON-BANK FINANCIAL INSTITUTION

“1401. Inapplicability of other sections.
“1402. Applicability of chapter 11 to cases under this chapter.
“1403. Prepetition consultation.
“1404. Appointment of trustee.
“1405. Right to be heard.
“1406. Right to communicate.
“1407. Exemption with respect to certain contracts or agreements.
“1408. Conversion or dismissal.

“§ 1401. Inapplicability of other sections

“Except as provided in section 1407, sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561 do not apply in a case under this chapter.

“§ 1402. Applicability of chapter 11 to cases under this chapter

“With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter.

“§ 1403. Prepetition consultation

“(a) Subject to subsection (b)—

“(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the filing of the petition by such institution, taken part in the consultation described in subsection (c); and

“(2) a creditor may not commence an involuntary case under this chapter unless, at least 10 days prior to the date of the filing of the petition by such creditor, the creditor notifies the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board of its intent to file a petition and requests a consultation as described in subsection (c).

“(b) If the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board, in consultation with any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, certify that the immediate filing of a petition under section 301 or 303 is necessary, or that an immediate filing would be in the interests of justice, a petition may be filed notwithstanding subsection (a).

“(c) The non-bank financial institution, the functional regulator, the Market Stability and Capital Adequacy Board, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor shall engage in prepetition consultation in order to attempt to avoid the need for the non-bank financial institution’s liquidation or reorganization in bankruptcy, to make any liquidation or reorganization of the non-bank financial institution under this title more orderly, or to aid in the nonbankruptcy resolution of any of the non-bank financial institution’s components under its nonbankruptcy insolvency regime. Such consultation shall specifically include the attempt to negotiate forbearance of claims between the non-bank financial institution and its creditors if such forbearance would likely help to avoid the commencement of a case under this title, would make any liquidation or reor-

ganization under this title more orderly, or would aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Additionally, the consultation shall consider whether, if a petition is filed under section 301 or 303, the debtor should file a motion for an exemption authorized by section 1407.

"(d) The court may allow the consultation process to continue for 30 days after the petition, upon motion by the debtor or a creditor. Any post-petition consultation proceedings authorized should be facilitated by the court's mediation services, under seal, and exclude ex parte communications.

"(e) The Market Stability and Capital Adequacy Board and the functional regulator shall publish and transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

"(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the No More Bailouts Act of 2009 or the amendments made by such Act.

"§ 1404. Appointment of trustee

"In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Market Stability and Capital Adequacy Board, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court's approval, one of such persons to serve as trustee in the case.

"§ 1405. Right to be heard

"(a) The functional regulator, the Market Stability and Capital Adequacy Board, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

"(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.

"§ 1406. Right to communicate

"The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Market Stability and Capital Adequacy Board, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.

"§ 1407. Exemption with respect to certain contracts or agreements

"(a) Subject to subsection (b)—

"(1) upon motion of the debtor, consented to by the Market Stability and Capital Adequacy Board—

"(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561;

"(B) if the Market Stability and Capital Adequacy Board consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

"(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, or 561, or any combination thereof; and

"(2) if the Market Stability and Capital Adequacy Board does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561, or any combination thereof.

"(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request the filing or briefs by the functional regulator and the Market Stability and Capital Adequacy Board. The court shall decide the motion not later than 5 days after commencing such hearing unless—

"(1) the parties in interest consent to a extension for a specific period of time; or

"(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

"(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor's assets for repayment and reorganization of the debtors obligations, or to provide for a more orderly liquidation.

"(d) For purposes of timing under section 562 of this title, if a motion is filed under subsection (a)(1) or if a motion is granted under subsection (a)(2), the date or dates of liquidation, termination, or acceleration shall be measured from the earlier of—

"(1) the actual date or dates of liquidation, termination, or acceleration; or

"(2) the date on which a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement

participant, or swap participant files a notice with the court that it would have liquidated, terminated, or accelerated a contract or agreement covered by section 562 of this title had a stay under this section not been in place.

"§ 1408. Conversion or dismissal

"In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be a debtor under such chapter unless the debtor is not a debtor in possession.", and

(2) by amending the table of chapters of such title by adding at the end the following:

"14. Adjustment to the Debts of a Non-Bank Financial Institution .... 1401".

SEC. 1004. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this title.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this title.

SEC. 1005. REFORMS OF SECTION 13 EMERGENCY POWERS.

(a) RESTRICTIONS ON EMERGENCY POWERS.—The third undesignated paragraph of section 13 of the Federal Reserve Act is amended—

(1) by striking "In unusual and exigent" and inserting the following:

"(3) EMERGENCY AUTHORITY.—

"(A) IN GENERAL.—In unusual and exigent"; and

(2) by adding at the end the following new subparagraph:

"(B) REQUIREMENT FOR BROAD AVAILABILITY OF DISCOUNTS.—Subject to the limitations provided under subparagraph (A), any authorization made pursuant to the authority provided under subparagraph (A) shall require discounts to be made broadly available to individuals, partnerships, and corporations within the market sector for which such authorization is being made.

"(C) TRANSPARENCY AND OVERSIGHT.—

"(i) SECRETARY OF THE TREASURY APPROVAL REQUIRED; NOTICE TO THE CONGRESS.—No authorization may be made pursuant to the authority provided under subparagraph (A) unless—

"(I) such authorization is first approved by the Secretary of the Treasury; and

"(II) the Secretary of the Treasury issues a notice to the Congress detailing what authorization the Secretary has approved.

"(ii) PROGRAMS MOVED ON-BUDGET AFTER 90 DAYS.—On and after the date that is 90 days after the date on which any authorization is made pursuant to the authority provided under subparagraph (A), all receipts and disbursements resulting from such authorization shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

"(I) the budget of the United States Government as submitted by the President;

"(II) the congressional budget; and

"(III) the Balanced Budget and Emergency Deficit Control Act of 1985.

"(D) JOINT RESOLUTION OF DISAPPROVAL.—

"(i) IN GENERAL.—With respect to an authorization made pursuant to the authority provided under subparagraph (A), if, during the 90-day period beginning on the date the Congress receives a notice described under subparagraph (C)(i)(II) with respect to such authorization, there is enacted into law a joint resolution disapproving such authorization, any action taken under such authorization must be discontinued and unwound not later than the end of the 180-day period beginning on the date that such authorization was made.

"(ii) CONTENTS OF JOINT RESOLUTION.—For the purpose of this paragraph, the term 'joint resolution' means only a joint resolution—

"(I) that is introduced not later than 3 calendar days after the date on which the notice referred to in clause (i) is received by the Congress;

"(II) which does not have a preamble;

"(III) the title of which is as follows: 'Joint resolution relating to the disapproval of authorization under the emergency powers of the Federal Reserve Act'; and

"(IV) the matter after the resolving clause of which is as follows: 'That Congress disapproves the authorization contained in the notice submitted to the Congress by the Secretary of the Treasury on the date of ______________ relating to ______________.' (The blank spaces being appropriately filled in.).

"(E) FAST TRACK CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

"(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report.

"(ii) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the notice referred to in subparagraph (D)(i). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

"(iii) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its

consideration, it shall be in order, not later than the sixth day after Congress receives the notice referred to in subparagraph (D)(i), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

"(iv) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

"(F) FAST TRACK CONSIDERATION IN SENATE.—

"(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

"(ii) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

"(iii) FLOOR CONSIDERATION.—

"(I) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) and ending on the 6th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

"(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

"(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

"(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

"(G) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

"(i) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

"(I) The joint resolution of the other House shall not be referred to a committee.

"(II) With respect to a joint resolution of the House receiving the resolution—

"(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(bb) the vote on passage shall be on the joint resolution of the other House.

"(ii) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

"(iii) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

"(iv) VETOES.—If the President vetoes the joint resolution, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

"(v) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subparagraph and subparagraphs (D), (E), and (F) are enacted by Congress—

"(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

"(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.".

(b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not later than 90 days after the date of the enactment of this title, all receipts and disbursements resulting from any authorization made before the date of the enactment of this title pursuant to the authority granted by the third undesignated paragraph of section 13 of the Federal Reserve Act shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President;

(2) the congressional budget; and

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 1006. ESTABLISHMENT OF MARKET STABILITY AND CAPITAL ADEQUACY BOARD.

(a) IN GENERAL.—There is hereby established the Market Stability and Capital Adequacy Board (hereafter in this title referred to as the "Board") as an independent establishment in the Executive Branch.

(b) CONSTITUTION OF BOARD.—Subject to paragraph (4), the Board shall have 12 members as follows:

(1) PUBLIC MEMBERS.—The following shall be members of the Board—

(A) The Secretary of the Treasury.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Chairman of the Securities and Exchange Commission.

(D) The Chairperson of the Federal Deposit Insurance Corporation.

(E) The Chairman of the Commodity Futures Trading Commission.

(F) The Comptroller of the Currency.

(G) The Director of the Office of Thrift Supervision.

(2) PRIVATE MEMBERS.—The Board shall also have 5 members appointed by the President, by and with the advice and consent of the Senate, who shall be appointed from among individuals who—

(A) are specially qualified to serve on the Board by virtue of their education, training, and experience; and

(B) are not officers or employees of the Federal Government, including the Board of Governors of the Federal Reserve System.

(3) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(4) DIRECTOR OF FHFA AS INTERIM MEMBER.—Until such time as the charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are both repealed pursuant to section 7006(d), the Board shall consist of 13 members with the Director of the Federal Housing Finance Agency serving as a public member under paragraph (1).

(c) APPOINTMENTS.—

(1) TERM.—

(A) IN GENERAL.—Each appointed member shall be appointed for a term of 5 years.

(B) STAGGERED TERMS.—Of the members of the Board first appointed under subsection (b)(2), as designated by the President at the time of appointment—

(i) 1 shall be appointed for a term of 5 years;

(ii) 1 shall be appointed for a term of 4 years;

(iii) 1 shall be appointed for a term of 3 years;

(iv) 1 shall be appointed for a term of 2 years; and

(v) 1 shall be appointed for a term of 1 year.

(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) CONTINUATION OF SERVICE.—Each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(4) REAPPOINTMENT TO A 2ND TERM.—Each member appointed to a term on the Board under subsection (b)(2), including an interim appointment under paragraph (2), may be reappointed by the President to serve 1 additional term.

(d) VACANCY.—

(1) IN GENERAL.—Any vacancy on the Board shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in any position listed in subsection (b)(1) and pending the appointment of a successor, or during the absence or disability of the individual serving in such position, any acting official in such position shall be a member of the Board while such vacancy, absence or disability continues and the acting official continues acting in such position.

(e) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—No member of the Board may hold any office, position, or employment in any financial institution or affiliate of a financial institution during—

(A) the time such member is in office; and

(B) the 2-year period beginning on the date such member ceases to serve on the Board.

(2) CERTIFICATION.—Upon taking office, each member of the Board shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board.

(f) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 3 members of the Board appointed under subsection (b)(2) shall be from the same political party.

(2) QUALIFICATIONS GENERALLY.—It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience commensurate with the duties of the Board.

(3) SPECIFIC APPOINTMENT QUALIFICATIONS FOR CERTAIN APPOINTED MEMBERS.—

(A) STATE BANK.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have had experience as a State bank supervisor or senior management executive with a State depository institution.

(B) INSURANCE COMMISSIONER.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have served as a State insurance commissioner or supervisor.

(4) INITIAL MEETING.—The Board shall meet and begin the operations of the Board as soon as practicable but not later than the end of the 180-day period beginning the date of the enactment of this title.

(g) QUORUM.—Four of the members of the Board designated under subsection (b)(1) and 3 members of the Board appointed under (b)(2) shall constitute a quorum.

(h) QUARTERLY MEETINGS.—The Board shall meet upon the call of the chairperson or a majority of the members at least once in each calendar quarter

SEC. 1007. FUNCTIONS OF BOARD.

(a) PRINCIPAL FUNCTIONS.—The principal functions of the Board shall be to—

(1) monitor the interactions of various sectors of the financial system; and

(2) identify risks that could endanger the stability and soundness of the system.

(b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In carrying out the functions described in subsection (a), the Board shall—

(1) review financial industry data collected from the appropriate functional regulators;

(2) review insurance industry data, in coordination with State insurance supervisors, for all lines of insurance other than health insurance;

(3) monitor government policies and initiatives;

(4) review risk management practices within financial regulatory agencies;

(5) review capital standards set by the appropriate functional regulators and make recommendations to ensure capital and leverage ratios match risks regulated entities are taking on;

(6) review transparency and regulatory understanding of risk exposures in the over-the-counter derivatives markets and make recommendations regarding the appropriate clearing of trades in those markets through central counterparties;

(7) make recommendations regarding any government or industry policies and practices that are exacerbating systemic risk; and

(8) take such other actions and make such other recommendations as the Board, in the discretion of the Board, determines to be appropriate.

(c) REPORTS TO FEDERAL FUNCTIONAL REGULATORS AND THE CONGRESS.—The Board shall periodically make a report to the Congress and the functional regulators on the findings, conclusions, and recommendations of the Board in a manner and within a time frame that allows the Congress and such regulators to act to contain risks posed by specific firms, industry practices, activities and interactions of entities under different regulatory regimes, or government policies.

(d) TESTIMONY TO CONGRESS.—Not later than February 20 and July 20 of each year, the Chairperson of the Board shall testify to the Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, about the state of systemic risk in the financial services industry and proposals or recommendations by the Board to address any undue risk.

(e) RULE OF CONSTRUCTION.—No provision of this title shall be construed as giving the Board any enforcement authority over any financial institution.

SEC. 1008. POWERS OF BOARD.

(a) CONTRACTING.—The Board may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Board to discharge its duties under this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Board may secure directly from any executive department, agency, or independent establishment, or any other instrumentality of the United States information and recommendations for the purposes of this title.

(2) DELIVERY OF REQUESTED INFORMATION.—Each executive department, agency, or independent establishment, or any other instrumentality of the United States shall, to the extent authorized by law, furnish any information and recommendations requested under paragraph (1) directly to the Board, upon request made by the chairperson or any member designated by a majority of the Commission.

(3) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Board and its staff consistent with all applicable statutes, regulations, and Executive orders.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Board on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by

law, including agencies represented on the Board under section 1006(b)(1).

SEC. 1009. RESPONSIBILITIES OF FEDERAL FUNCTIONAL REGULATORS.

(a) FEDERAL FUNCTIONAL REGULATOR DEFINED.—For purposes of this title, the term "Federal functional regulator" has the same meaning as in section 509(2) of the Gramm-Leach-Bliley Act, except that such term includes the Commodity Futures Trading Commission.

(b) ASSESSMENTS AND REVIEWS.—In order to address current regulatory gaps, each Federal functional regulator shall, before each quarterly meeting of the Board—

(1) assess the effects on macroeconomic stability of the activities of financial institutions that are subject to the jurisdiction of such agency;

(2) review how such financial institutions interact with entities outside the jurisdiction of such agency; and

(3) report the results of such assessment and review to the Board, together with such recommendations for administrative action as the agency determines to be appropriate.

SEC. 1010. STAFF OF BOARD.

(a) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Board and title 5, United States Code, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Board to carry out its functions.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Board and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Board may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SEC. 1011. COMPENSATION AND TRAVEL EXPENSES.

(a) COMPENSATION.—Each member of the Board appointed under section 1006(b)(2) may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL

SEC. 2001. SHORT TITLE.

This title may be cited as the "Financial Institutions Consumer Protection and Examination Council Act of 2009".

SEC. 2002. DEFINITIONS.

(a) RENAMING COUNCIL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by striking "Financial Institutions Examination Council" each place it appears, except for in section 1001 of such Act, and inserting "Financial Institutions Consumer Protection and Examination Council".

(b) DEFINITIONS RELATING TO CONSUMER PROTECTION.—Section 1003 of such Act (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking "and"; and

(2) by adding at the end the following new paragraphs:

"(4) the term 'enumerated consumer laws' means—

"(A) the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.);

"(B) the Community Reinvestment Act;

"(C) the Consumer Leasing Act;

"(D) the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.);

"(E) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

"(F) the Fair Credit Billing Act;

"(G) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

"(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

"(I) subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t);

"(J) sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.);

"(K) the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.);

"(L) the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

"(M) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.);

"(N) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

"(O) the Truth in Savings Act (12 U.S.C. 4301 et seq.); and

"(5) the term 'expanded Board' means——

"(A) the members of the Council described under section 1004(a);

"(B) the Secretary of Housing and Urban Development;

"(C) the Chairman of the Securities and Exchange Commission;

"(D) the Chairman of the Commodities Futures Trading Commission;

"(E) the Chairman of the Federal Trade Commission;

"(F) the Director of the Federal Housing Finance Agency;

"(G) the Director of the Pension Benefit Guarantee Corporation;

"(H) the Secretary of the Treasury;

"(I) the Secretary of Defense; and

"(J) the Secretary of Veterans' Affairs.".

(c) DEFINITIONS RELATED TO THE STATE LIAISON COMMITTEE.—Section 1007 of such Act (12 U.S.C. 3306) is amended by inserting

after "financial institutions" the following: "and one representative of the National Association of Insurance Commissioners".

SEC. 2003. FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL.

(a) CONSUMER PROTECTION DUTIES.—Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

"(h) CONSUMER PROTECTION REGULATIONS.—

"(1) IN GENERAL.—The Council shall study the need for revised or new regulations for the protection of consumers under the enumerated consumer laws and shall vote on suggested model regulations that the Council determines necessary for the protection of consumers under the enumerated consumer laws.

"(2) REGULATIONS ISSUED BY COUNCIL MEMBERS.—Not later than the end of the 1-month period beginning on the date a suggested model regulation is agreed to by the Council by a majority vote of the members of the Council, the members of the Council, other than the Chairman of the State Liaison Committee, shall jointly issue regulations based on such suggested model regulation, where applicable.

"(3) EXPANDED BOARD REQUIRED.—For purposes of any action taken pursuant to this subsection and any reference to the members of the Council under this subsection, the Council shall consist of the expanded Board.

"(4) NO COUNCIL ENFORCEMENT POWER.—No provision of this subsection shall be construed as conferring any enforcement authority to the Council.

"(5) REQUIREMENTS FOR REGULATIONS PROPOSED BY THE CHAIRMAN OF THE STATE LIAISON COMMITTEE.—

"(A) IN GENERAL.—The Chairman of the State Liaison Committee may not propose any suggested model regulation for the Council to vote on under this subsection unless such proposed suggested model regulation is accompanied by a certification from the Chairman of the State Liaison Committee stating that more than half of the States support such proposal.

"(B) METHOD OF DETERMINATION.—For purposes of this paragraph, the Chairman of the State Liaison Committee shall determine the method for determining if a State supports a proposal.".

(b) ADDITIONAL STAFF.—Section 1008 of such Act (12 U.S.C. 3307) is amended by adding at the end the following new subsection:

"(d) CONSUMER PROTECTION STAFF.—

"(1) IN GENERAL.—At the request of the Council, any member of the expanded Board, other than the Chairman of the State Liaison Committee, may detail, on a reimbursable basis, any of the personnel of that member's department or agency to the Council to assist it in carrying out the Council's duties under subsection (h).

"(2) EXPANDED BOARD REQUIRED.—When making any request under this subsection, the Council shall consist of the expanded Board.".

SEC. 2004. OFFICE OF CONSUMER PROTECTION.

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following new section:

"SEC. 1012. OFFICE OF CONSUMER PROTECTION.

"(a) OFFICE OF CONSUMER PROTECTION.—There is hereby established within the Council an Office of Consumer Protection (hereinafter in this section referred to as the 'Office').

"(b) CONSUMER COMPLAINT HOTLINE AND WEBSITE.—The Office shall establish a toll-free hotline and a website for consumers to contact regarding inquiries or complaints related to consumer protection. Such hotline and website shall then refer such inquiries or complaints to the appropriate Council member, which will then respond to the inquiry or complaint.

"(c) DISCLOSURE REVIEW.—Not less often than once every 7 years, the Office shall undertake a comprehensive review of the rules and regulations regarding disclosures made by entities under the jurisdiction of the members of the Council to consumers. In making such review the Office shall perform a cost and benefit analysis of each such disclosure and determine if the policy of the members of the Council towards such disclosure should remain the same or be revised.

"(d) CONSUMER TESTING REQUIREMENT.—Before prescribing any regulation pursuant to section 1006(h), the Council shall have the Office carry out consumer testing with respect to such proposed model regulation.

"(e) PERIODIC REVIEW OF REGULATIONS.—

"(1) REVIEW.—Not less than once every 7 years, the Office shall undertake a comprehensive review of all regulations issued by the members of the Council pursuant to section 1006(h)(2). In making such review, the Office shall perform a cost and benefit analysis of each regulation and determine if such regulation should remain the same or if such regulation should be revised.

"(2) REPORT.—After performing a review required by paragraph (1), the Office shall issue a report to the Congress describing the review process, any determinations made by the Office, and any revisions to regulations that the Office determined were needed.".

SEC. 2005. STATE ENFORCEMENT AUTHORITY.

(a) ENFORCEMENT OF COUNCIL REGULATIONS.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended by section 2004, is further amended by adding at the end the following new section:

"SEC. 1013. STATE ENFORCEMENT AUTHORITY.

"The chief law enforcement officer of a State, or an official or agency designated by a State, shall have the authority to enforce any regulations issued by the members of the Council pursuant to section 1006(h)(2) against entities regulated by such State.".

(b) ENFORCEMENT OF STATE CONSUMER PROTECTION LAWS AGAINST NATIONAL BANKS AND THRIFTS.—Notwithstanding any other provision of law, other than section 5240 of the Revised Statutes and the comparable limitation on visitorial authority applicable to federal savings associations, the chief law enforcement officer

of a State, or an official or agency designated by a State, shall have the right to enforce such State's non-preempted consumer protection laws against national banks.

SEC. 2006. UNFAIR OR DECEPTIVE ACTS OR PRACTICES AUTHORITY TRANSFERRED.

Section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(1) by striking "(with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))" and inserting the following: "(with respect to entities described in paragraph (2)(B)), the Comptroller of the Currency (with respect to entities described in paragraph (2)(A)), the Board of Directors of the Federal Deposit Insurance Corporation (with respect to entities described under paragraph (2)(C)), the Director of the Office of Thrift Supervision (with respect to savings associations or any savings and loan institutions described in paragraph (3)),";

(2) by striking "each such Board" and inserting "each such entity"; and

(3) by striking "any such Board" and inserting "any such entity".

SEC. 2007. EQUALITY OF CONSUMER PROTECTION FUNCTIONS; CONSUMER PROTECTION DIVISIONS.

(a) EQUALITY OF CONSUMER PROTECTION FUNCTIONS.—With respect to each regulatory agency, the functions of such agency related to consumer protection shall be of equal importance to such agency as the other functions of such agency.

(b) CONSUMER PROTECTION DIVISIONS.—

(1) IN GENERAL.—There is hereby established within each regulatory agency a consumer protection division.

(2) REPORT.—The head of each consumer protection division established under paragraph (1) shall submit an annual report to the Congress detailing the performance of the regulatory agency in which such division is located in enforcing the consumer protection laws.

(c) REGULATORY AGENCY DEFINED.—For purposes of this section, the term "regulatory agency" means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Trade Commission, and the Department of Housing and Urban Development.

SEC. 2008. PROHIBITION ON CHARTER CONVERSIONS WHILE UNDER REGULATORY SANCTION.

With respect to an entity for which there is an appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), such agency shall issue regulations prohibiting such an entity from converting the type of such entity's charter during any time in which such entity is under a regulatory sanction by such agency.

TITLE III—ANTI-FRAUD PROVISIONS

SEC. 3001. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

"(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

"(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

"(A) such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

"(B) such penalty is in the public interest.

"(2) MAXIMUM AMOUNT OF PENALTY.—

"(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $6,500 for a natural person or $65,000 for any other person.

"(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be $65,000 for a natural person or $325,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

"(C) THIRD TIER.—Notwithstanding paragraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $130,000 for a natural person or $650,000 for any other person if—

"(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

"(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

"(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.".

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking "(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding" and inserting the following:

"(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

"(1) IN GENERAL.—In any proceeding";

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such subsection the following new paragraph:

"(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

"(A) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.".

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking "(1) AUTHORITY OF COMMISSION.—In any proceeding" and inserting the following:

"(1) AUTHORITY OF COMMISSION.—

"(A) IN GENERAL.—In any proceeding";

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

"(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.".

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking "(1) AUTHORITY OF COMMISSION.—In any proceeding" and inserting the following:

"(1) AUTHORITY OF COMMISSION.—

"(A) IN GENERAL.—In any proceeding";

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

"(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

"(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

"(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.".

SEC. 3002. FORMERLY ASSOCIATED PERSONS.

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking "any member or employee" and inserting "any person who is, or at the time of the alleged misconduct was, a member or employee".

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking "or seeking to become associated," and inserting "seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated";

(2) in subsection (c)(2)(A), by inserting ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated"; and

(3) in subsection (c)(2)(B), by inserting ", seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated" after "any person associated".

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting ", or, as to any act or practice, or omission to act, while associated with a member, formerly associated" after "member or a person associated".

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting "or, as to any act or practice, or omission to act, while a participant, was a participant," after "in which such person is a participant,".

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking "any officer or director" and inserting "any person who is, or at the time of the alleged misconduct was, an officer or director"; and

(2) by striking "such officer or director" and inserting "such person".

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking "a person serving or acting" and inserting "a person who is, or at the time of the alleged misconduct was, serving or acting"; and

(2) by striking "such person so serves or acts" and inserting "such person so serves or acts, or at the time of the alleged misconduct, so served or acted".

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

"(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

"(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with a registered public accounting firm; and

"(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

"(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

"(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.".

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking "or a person associated with such a firm" and inserting ", a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm".

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking "the supervisory personnel" and inserting "any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person"; and

(2) in subparagraph (B)—

(A) by striking "No associated person" and inserting "No current or former supervisory person"; and

(B) by striking "any other person" and inserting "any associated person".

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking "any member" and inserting "any person who is, or at the time of the alleged misconduct was, a member".

SEC. 3003. COLLATERAL BARS.

(a) SECTION 15(b)(6)(A) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking "12 months, or bar such person from being associated with a broker or dealer," and inserting "12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,".

(b) SECTION 15B(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking "twelve months or bar any such person from being associated with a municipal securities dealer," and inserting "twelve months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,".

(c) SECTION 17A(c)(4)(C) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking "twelve months or bar any such person from being associated with the transfer agent," and inserting "twelve months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, or municipal securities dealer,".

(d) SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking "twelve months or bar any such person from being associated with an investment adviser," and inserting "twelve months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent,".

SEC. 3004. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking "; and" and inserting "; or".

SEC. 3005. NATIONWIDE SERVICE OF PROCESS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: "In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible

things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

SEC. 3006. REAUTHORIZATION OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) FINDINGS.—

(1) The Congress finds as follows:

(A) The work of the Financial Crimes Enforcement Network (hereinafter in this section referred to as ''FinCEN'') is essential to safeguard the United States financial system and its international affiliates from the abuses of financial crime, including terrorist financing, weapons of mass destruction proliferation, and money laundering.

(B) All avenues of financial intermediation are vulnerable to abuse by illicit actors, and FinCEN exercises the authorities of the Bank Secrecy Act over a broad range of financial institutions.

(2) The Congress further finds and recognizes the recent establishment by FinCEN of an International Programs Division to expand and enhance global financial intelligence sharing initiatives aimed at combating transnational crime threats facing United States financial markets, and takes note of FinCEN's efforts to collaborate with foreign financial intelligence unit partners on analytical projects to identify and address emerging threats and vulnerabilities.

(3) The Congress further finds and recognizes the role of FinCEN in discovering and investigating widespread fraud in the mortgage market and elsewhere in the financial services industry. Alongside an effective licensing and registration system for all mortgage originators, a vigilant FinCEN is critical to the recovery of our housing markets and consumer confidence in both the home buying process and the financial services industry as a whole.

(b) REAUTHORIZATION.—Section 310(d)(1) of title 31, United States Code, is amended by striking ''such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005'' and inserting

"not more than $105,500,000 for fiscal year 2010, and such sums as may be necessary for fiscal years 2011, 2012, 2013, and 2014".

(c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION OF APPROPRIATIONS.—In addition to such other amounts otherwise made available or appropriated to FinCEN, there are authorized to be appropriated to FinCEN $15,000,000 to be used specifically for efforts to detect financial fraud. Such sums are authorized to remain available until expended.

SEC. 3007. FAIR FUND IMPROVEMENTS.

(a) AMENDMENT.—Subsection (a) of section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended to read as follows:

"(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.".

(b) CONFORMING AMENDMENTS.—Section 308 of such Act is amended—

(1) in subsection (b)—

(A) by striking "for a disgorgement fund described in subsection (a)" and inserting "for a disgorgement fund or other fund described in subsection (a)"; and

(B) by striking "in the disgorgement fund" and inserting "in such fund"; and

(2) by striking subsection (e).

TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

SECTION 4001. SHORT TITLE.

This title may be cited as the "Over-the-Counter Derivatives Markets Act of 2009".

Subtitle A—Amendments to the Commodity Exchange Act

SEC. 4100. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended by adding at the end the following:

"(35) SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

"(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

"(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contin-

gency associated with a potential financial, economic, or commercial consequence;

"(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

"(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

"(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

"(B) EXCLUSIONS.—The term 'swap' does not include:

"(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

"(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

"(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

"(ix) any foreign exchange swap;

"(x) any foreign exchange forward;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap, other than a security-based swap as described in paragraph (36](C).

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

"(36) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

"(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

"(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

"(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it references or is based upon a government security.

"(C) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

"(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

"(37) SWAP DEALER.—

"(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

"(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

"(38) SECURITY-BASED SWAP DEALER.—

"(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-based swaps for such person's own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

"(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or

in a fiduciary capacity, but not as a part of a regular business.

"(39) MAJOR SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging (including balance sheet hedging) or risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major swap participant for 1 or more individual types of swaps.

"(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.— The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

"(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

"(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for commercial hedging (including balance sheet hedging) or financial risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major security-based swap participant for 1 or more individual types of security-based swaps.

"(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

"(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(42) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

"(43) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

"(A) the Board, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

"(i) a State-chartered bank that is a member of the Federal Reserve System;

"(ii) a State-chartered branch or agency of a foreign bank; or

"(iii) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

"(B) the Office of the Comptroller of the Currency, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

"(i) a national bank; or

"(ii) a federally chartered branch or agency of a foreign bank;

"(C) the Federal Deposit Insurance Corporation, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System; or

"(D) the Office of Thrift Supervision, in the case of a savings association (as defined in section 2 of the Home Owners' Loan Act) or a savings and loan holding company (as defined in section 10 of such Act).

"(44) SWAP REPOSITORY.—The term 'swap repository' means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.".

SEC. 4101. SWAP REPOSITORIES.

(a) SWAP REPOSITORIES.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

"SEC. 21. SWAP REPOSITORIES.

"(a) REQUIRED REPORTING.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—

"(A) IN GENERAL.—Any swap that is not accepted for clearing by a derivatives clearing organization shall be reported to either a swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the swap, to the Commission in accordance with section 4r within such time period as the Commission may by rule prescribe.

"(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties to a swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

"(2) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 270 days after the effective date of such Act.

"(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

"(i) 180 days after the effective date of such Act; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(b) SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—It shall be unlawful for a swap repository, unless registered with the Commission, directly or in-

directly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

"(B) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

"(3) DUTIES.—A swap repository shall—

"(A) accept data prescribed by the Commission for each swap under paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

"(D) make available, on a confidential basis, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) REQUIRED REGISTRATION FOR SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

"(5) HARMONIZATION OF RULES.—Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

"(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap

repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.''.

(b) REPORTING AND RECORDKEEPING.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.

''(a) IN GENERAL.—Any person who enters into a swap that is not accepted for clearing by a derivatives clearing organization and is not reported to a swap repository registered pursuant to section 21 shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

''(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires repositories to collect.''.

(c) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—Section 8 of such Act (7 U.S.C. 12) is amended by adding at the end the following:

''(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) derivatives clearing organizations;

''(B) swap repositories pursuant to section 21(c)(3); and

''(C) reports received by the Commission pursuant to section 4r.''.

SEC. 4102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 4101(b) of this title) the following:

"SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS DEALERS AND CERTAIN MAJOR SWAP PARTICIPANTS.

"Each Prudential Regulator shall impose both initial and variation margin requirements on all swaps between swap dealers and major swap participants subject to regulation by the Regulator, that are not cleared by a derivatives clearing organization.".

SEC. 4103. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 4102 of this title) the following:

"SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

"(a) CLEARED SWAPS.—A swap dealer, futures commission merchant, or derivatives clearing organization by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a swap to be cleared by or through a derivatives clearing organization shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and relations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

"(b) OVER-THE-COUNTER SWAPS.—At the request of a swap counterparty who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. Any such funds and property may, with the agreement of the customer, be commingled with the funds and property of other swap counterparties and customers and shall be eligible for treatment as customer property under this Act. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

"(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.".

Subtitle B—Amendments to the Securities Exchange Act of 1934

SEC. 4201. DEFINITIONS.

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

"(65) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as

in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

"(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

"(68) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

"(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

"(70) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

"(71) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

"(72) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).".

SEC. 4202. SWAP REPOSITORIES.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

"SEC. 3B. SWAP REPOSITORIES.

"(a) REQUIRED REPORTING.—

"(1) IN GENERAL.—

"(A) IN GENERAL.—Any security-based swap that is not accepted for clearing by any clearing agency shall be reported to either a security-based swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the security-based swap, to the Commission in accordance with section 13A within such time period as the Commission may by rule prescribe.

"(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties to a security-based swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any security-based swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

"(2) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 270 days after the effective date of such Act.

"(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter De-

rivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

"(i) 180 days after the effective date of such Act; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(b) SECURITY-BASED SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, 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 security-based swap repository.

"(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

"(3) DUTIES.—A security-based swap repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13(m); and

"(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

"(5) HARMONIZATION OF RULES.—Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

"(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.".

(b) REPORTING AND RECORDKEEPING.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

"SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

"(a) IN GENERAL.—Any person who enters into a security-based swap that is not accepted for clearing by any clearing agency and is not reported to a security-based swap repository registered pursuant to section 3B(b) shall meet the requirements in subsection (b).

"(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

"(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect.".

(c) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, ag-

gregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) clearing agencies;

"(B) security-based swap repositories registered pursuant to section 3B(b); and

"(C) reports received by the Commission pursuant to section 13A.".

SEC. 4203. MARGIN REQUIREMENTS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3B:

"SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

"Each Prudential Regulator shall impose both initial and variation margin requirements on all security-based swaps between security-based swap dealers and major security-based swap participants subject to regulation by the Regulator, that are not cleared by a clearing agency.".

SEC. 4204. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by section 4203) the following:

"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

"(a) CLEARED SWAPS.—A security-based swap dealer or clearing agency by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a security-based swap to be cleared by or through a derivatives clearing agency shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

"(b) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a security-based swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing agency, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related al-

location of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

"(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.".

Subtitle C—Common Provisions

SEC. 4301. REPORT TO THE CONGRESS.

Within 1 year after the date of the enactment of this title, and not less frequently than annually thereafter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall review data from swap repositories, security-based swap repositories, derivative clearing organizations, and clearing agencies, and if the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators jointly find that the activities of swaps dealers, securities-based swaps dealers, major swap participants, or major security-based swap participants not subject to regulation by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or a Prudential Regulator, in relation to swaps or security-based swaps that are not submitted to a derivatives clearing organization or clearing agency for clearing, have become so substantial or imprudent as to potentially threaten the stability of financial markets or the economy, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall jointly submit to the Congress a report on the situation, including recommendations as to whether the activities should be subject to further regulation.

SEC. 4302. CAPITAL REQUIREMENTS.

Each Prudential Regulator shall take into account the swaps and security-based swaps activities of the entities subject to regulation by the Regulator in establishing capital requirements for the entities.

SEC. 4303. CENTRALIZED CLEARING.

(a) IN GENERAL.—The Board, in consultation and coordination with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall implement policies and procedures designed to increase the use of central counterparties for clearing of over-the-counter swaps transactions by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with the goal of significantly reducing the risk profile of the market in which the transactions occur.

(b) FIRM TARGETS.—

(1) IN GENERAL.—Pursuant to subsection (a), the Board shall establish the following firm goals for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with respect to the clearing of certain swaps:

(A) INTEREST RATE SWAPS.—In the case of interest rate swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 90 percent of new eligible trades (calculated on a notional basis);

(ii) 70 percent of new eligible trades (calculated on a weighted average notional basis); and

(iii) 60 percent of historical eligible trades (calculated on a weighted average notional basis).

(B) CREDIT DEFAULT SWAPS.—In the case of credit default swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 95 percent of new eligible trades (calculated on a notional basis); and

(ii) 80 percent of all eligible trades (calculated on a weighted average notional basis).

(2) DEFINITIONS.—In paragraph (1):

(A) ELIGIBLE TRADE.—The term "eligible trade" means a trade on an eligible product between counterparties each of whom—

(i) is a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant; and

(ii) has a clearing relationship in place with 1 or more common derivative clearing organizations or clearing agencies) for the eligible product.

(B) ELIGIBLE PRODUCT.—The term "eligible product" means a product eligible for clearing by a derivative clearing organization or clearing agency.

(c) OTHER CONTRACTS AND COUNTERPARTIES.—The Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall actively engage central counterparties and regulators globally to—

(1) broaden the set of derivative products eligible for clearing by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, taking into account risk, liquidity, default management and other processes; and

(2) expand the set of counterparties eligible to clear at each eligible central counterparty taking into account appropriate counterparty risk management considerations, including the development of buy-side clearing.

SEC. 4304. DEFINITIONS.

The terms used in this subtitle shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

SEC. 5001. SHORT TITLE.

This title may be cited as the "Corporate and Financial Institution Compensation Fairness Act of 2009".

SEC. 5002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

"(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.—

"(1) IN GENERAL.—A proxy or consent or authorization for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder advisory vote, at least once every three years, to approve the registrant's executive compensation policies and practices as set forth pursuant to the Commission's disclosure rules. The shareholder vote shall be advisory in nature and shall not be binding on the issuer or its board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation for meetings of shareholders at which such an advisory vote on executive compensation is not to be conducted.

"(2) OPT OUT.—If not less than ⅔ of votes cast at a meeting of shareholders on a proposal to opt out of the triennial shareholder advisory vote on executive compensation required under paragraph (1) are cast in favor of such a proposal, then such shareholder advisory vote required under such paragraph shall not be required to take place for a period of 5 years following the vote approving such proposal.

"(3) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

"(A) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), that concerns an acquisition, merger, consolidations, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the named executive officers (as such term is defined in the rules promulgated by the Commission) of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other dispositions of all or substantially all of the assets of the issuer, and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such named executive officer.

"(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board."

"(4) RULEMAKING.—Not later than 1 year after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue rules and regulations to implement this subsection.".

(b) STUDY AND REPORT.—The Securities and Exchange Commission shall conduct a study and review of the results of shareholder advisory votes on executive compensation held pursuant to this section and the effects of such votes. Not later than 5 years after the date of enactment of this title, the Securities and Exchange Commission shall submit a report to the Congress on the results of the study and review required by this subsection.

SEC. 5003. COMPENSATION COMMITTEE INDEPENDENCE.

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after section 10A the following new section:

"SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.

"(a) COMMISSION RULES.—

"(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

"(4) NO FEDERAL PREEMPTION.—If the law of the State under which an issuer is incorporated provides for a procedure for the board of directors to establish an independent compensation committee, then such State law shall be controlling and nothing in this section shall preempt such State law.

"(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be a member

of the board of directors of the issuer, and shall otherwise be independent.

"(2) CRITERIA.—The Commission shall, by rule, establish the criteria for determining whether a director is independent for purposes of this subsection. Such rules shall require that a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

"(A) accept any consulting, advisory, or other compensatory fee from the issuer; or

"(B) be an affiliated person of the issuer or any subsidiary thereof.

"(3) EXEMPTIVE AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

"(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

"(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

"(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—The charter of the compensation committee of the board of directors of an issuer shall set forth that any outside compensation consultant formally engaged or retained by the compensation committee shall meet standards for independence to be promulgated by the Commission.

"(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the

Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

"(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

"(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

"(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c); and

"(2) to any independent counsel or other adviser to the compensation committee.".

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Security Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this title, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

TITLE VI—CREDIT RATING AGENCIES

SEC. 6001. CHANGES TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking "nationally recognized statistical rating" each place it appears and inserting "nationally registered statistical rating".

SEC. 6002. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking "not of investment grade";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation";

(C) in paragraph (2), by striking "not of investment grade";

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation";

(2) in section 28(e)—

(A) in the subsection heading, by striking "not of investment grade";

(B) in paragraph (1), by striking "not of investment grade" and inserting "that does not meet standards of credit-worthiness as established by the Corporation"; and

(C) in paragraphs (2) and (3), by striking "not of investment grade" each place that it appears and inserting "that does not meet standards of credit-worthiness established by the Corporation"; and

(3) in section 7(b)(1)(E)(i), by striking "credit rating entities, and other private economic" and inserting "private economic, credit,".

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking "by rating organization"; and

(2) by striking "that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,".

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking "is rated investment grade by not less than 1 nationally recognized statistical rating organization" and inserting "meets such standards of credit-worthiness that the Commission shall adopt".

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking "any applicable rating" and inserting "standards of credit worthiness established by the Comptroller of the Currency";

(2) in the heading for subsection (a)(3) by striking "rating or comparable requirement" and inserting "requirement";

(3) in subsection (a)(3), by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the

Board of Governors of the Federal Reserve System may jointly establish.";

(4) in the heading for subsection (f), by striking "maintain public rating or" and inserting "meet standards of credit-worthiness"; and

(5) in subsection (f)(1), by striking "any applicable rating" and inserting "standards of credit-worthiness established by the Comptroller of the Currency".

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking "is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as defined by the Commission"; and

(2) in paragraph (53)(A), by striking "is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization" and inserting "meets standards of credit-worthiness as defined by the Commission".

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking "rating" and inserting "worthiness".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this title.

SEC. 6003. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—

(1) REVIEW.—Not later than 1 year after the date of the enactment of this title, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) REPORT.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to the Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General of the United States shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(4), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller General shall transmit to the Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

TITLE VII—GOVERNMENT-SPONSORED ENTERPRISES REFORM

SEC. 7001. SHORT TITLE.

This title may be cited as the “Government-Sponsored Enterprises Free Market Reform Act of 2009”.

SEC. 7002. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) CHARTER.—The term “charter” means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term “Director” means the Director of the Federal Housing Finance Agency.

(3) ENTERPRISE.—The term “enterprise” means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term “guarantee” means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a Government-sponsored enterprise.

SEC. 7003. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month period beginning upon the date of the enactment of this title; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this title.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

SEC. 7004. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 7003(b), if the Director makes the determination under section 7003(a)(1), the following provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

"SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.

"(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

"(1) upon the expiration of the period referred to in section 7003(b) of the Government-Sponsored Enterprises Free Market Reform Act of 2009, $850,000,000,000; or

"(2) on December 31 of each year thereafter, 80.0 percent of the aggregate amount of mortgage assets of the enterprise as of December 31 of the immediately preceding calendar year;

except that in no event shall an enterprise be required under this section to own less than $250,000,000,000 in mortgage assets.

"(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term 'mortgage assets' means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise

in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).''.

(2) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is amended—

(A) in subsection (a), by striking ''For purposes of this subtitle, the minimum capital level for each enterprise shall be'' and inserting ''The minimum capital level established under subsection (g) for each enterprise may not be lower than'';

(B) in subsection (c)—

(i) by striking ''subsections (a) and'' and inserting ''subsection'';

(ii) by striking ''regulated entities'' the first place such term appears and inserting ''Federal Home Loan Banks'';

(iii) by striking ''for the enterprises,'';

(iv) by striking '', or for both the enterprises and the banks,'';

(v) by striking ''the level specified in subsection (a) for the enterprises or''; and

(vi) by striking ''the regulated entities operate'' and inserting ''such banks operate'';

(C) in subsection (d)(1)—

(i) by striking ''subsections (a) and'' and inserting ''subsection''; and

(ii) by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(D) in subsection (e), by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(E) in subsection (f)—

(i) by striking ''the amount of core capital maintained by the enterprises,''; and

(ii) by striking ''regulated entities'' and inserting ''banks''; and

(F) by adding at the end the following new subsection:

''(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

''(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for the enterprises and by using such other methods as the Director deems appropriate.

''(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director,

in the Director's discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

"(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

"(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of an enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

"(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

"(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

"(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

"(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

"(3) ADHERENCE TO PLAN.—

"(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

"(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.".

(3) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185) is hereby repealed.

(ii) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Section 1203 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 225) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 7003(b) of this section occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) $417,000 for a mortgage secured by a single-family residence,

(ii) $533,850 for a mortgage secured by a 2-family residence,

(iii) $645,300 for a mortgage secured by a 3-family residence, and

(iv) $801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.".

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: "Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.".

(4) REQUIREMENT TO PAY STATE AND LOCAL TAXES.—

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking "shall be exempt from" and inserting "shall be subject to"; and

(ii) by striking "except that any" and inserting "and any".

(B) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended—

(i) by striking "shall be exempt from" and inserting "shall be subject to"; and

(ii) by striking "except that any" and inserting "and any".

(5) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Gov-

ernment for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this title, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 7005. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.

(a) REQUIRED RENEWAL; WIND DOWN AND DISSOLUTION UPON NON-RENEWAL.—Upon the expiration of the 3-year period that begins upon the expiration of the period referred to in section 7003(b), unless the charter of an enterprise is renewed pursuant to subsection (b) of this section, section 7006 (relating to wind down of operations and dissolution of enterprise) shall apply to the enterprise.

(b) RENEWAL PROCEDURE.—

(1) APPLICATION; TIMING.—The Director shall provide for each enterprise to apply to the Director, before the expiration of the 3-year period under subsection (a), for renewal of the charter of the enterprise.

(2) STANDARD.—The Director shall approve the application of an enterprise for the renewal of the charter of the enterprise if—

(A) the application includes a certification by the enterprise that the enterprise is financially sound and is complying with all provisions of, and amendments made by, section 7004 of this title applicable to such enterprise; and

(B) the Director verifies that the certification made pursuant to subparagraph (A) is accurate.

(c) OPTION TO REAPPLY.—Nothing in this section may be construed to require an enterprise to apply under this section for renewal of the charter of the enterprise.

SEC. 7006. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an enterprise—

(1) upon the expiration of the 3-year period referred to in such section 7005(a), to the extent provided in such section; and

(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 7003(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this title and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection (b); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

(i) remaining debt obligations of the enterprise, for the benefit of holders of such remaining obligations; or

(ii) remaining mortgages held for the purpose of backing mortgage-backed securities, for the benefit of holders of such remaining securities.

(d) REPEAL OF CHARTER.—Effective upon the expiration of the 10-year period referred to in subsection (b) for an enterprise, the charter for the enterprise is repealed, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

TITLE VIII—FEDERAL INSURANCE OFFICE

SEC. 8001. SHORT TITLE.

This title may be cited as the "Federal Insurance Office Act of 2009".

SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

"SEC. 313. FEDERAL INSURANCE OFFICE.

"(a) ESTABLISHMENT OF OFFICE.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

"(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

"(c) FUNCTIONS.—

"(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

"(A) To monitor the insurance industry to gain expertise.

"(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

"(C) To recommend for review by the Market Stability and Capital Adequacy Board any activities or practices by insurers or their affiliates that may be exacerbating systemic risk.

"(D) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

"(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

"(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

"(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

"(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

"(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

"(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

"(e) GATHERING OF INFORMATION.—

"(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

"(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term 'insurer' means any entity that is authorized to write insurance or reinsure risks and issue contracts or policies in one or more States.

"(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of

an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(5) CONFIDENTIALITY.—

"(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(B) Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

"(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(D) Section 552 of title 5, United States Code, shall apply to any data or information submitted by an insurer or affiliate of an insurer.

"(f) PREEMPTION OF STATE INSURANCE MEASURES.—

"(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to

the extent that the Director determines, in accordance with this subsection, that the measure—

"(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

"(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

"(2) DETERMINATION.—

"(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

"(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

"(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

"(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

"(iv) provide interested parties a reasonable opportunity to submit written comments to the Office;

"(v) consider the effect of preemption on—

"(I) the protection of policyholders and policy claimants;

"(II) the maintenance of the safety, soundness, integrity, and financial responsibility of any entity involved in the business of insurance or insurance operations;

"(III) ensuring the integrity and stability of the United States financial system; and

"(IV) the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States; and

"(vi) consider any comments received.

The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

"(B) SCOPE OF REVIEW.—For purposes of this section, the Director's determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be shorter than 90 days, before the determination shall become effective; and

"(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

"(A) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

"(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.—Determinations of inconsistency pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.

"(h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

"(i) CONSULTATION.—The Director shall consult with State insurance regulators, individually and collectively, to the extent the Director determines appropriate, in carrying out the functions of the Office.

"(j) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) preempt any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

"(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

"(3) be construed to alter, amend, or limit the responsibility of any department or agency of the Federal Government to issue regulations under the Truth in Lending Act (15 U.S.C. 1601 et seq.) or any other Federal law regulating the provision of consumer financial products or services;

"(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term in defined in subsection (p)); or

"(5) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish a general supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

"(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

"(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

"(n) REPORTS TO CONGRESS.—

"(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

"(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

"(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

"(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person that controls, is controlled by, or is under common control with the insurer.

"(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral recognition agreement that—

"(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

"(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

"(3) DETERMINATION OF INCONSISTENCY.—The term 'determination of inconsistency' means a determination that a State insurance measure is preempted under subsection (f).

"(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term 'Federal financial regulatory agency' means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

"(5) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

"(6) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

"(7) OFFICE.—The term 'Office' means the Federal Insurance Office established by this section.

"(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(9) STATE.—The term 'State' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

"(10) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(11) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(12) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.

"(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office such sums as may be necessary for each fiscal year.

"SEC. 314. COVERED AGREEMENTS.

"(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

"(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

"(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

"(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

"(A) the nature of the agreement;

"(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

"(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

"(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

"(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

"(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.".

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

"Sec. 312. Terrorism and Financial Intelligence.
"Sec. 313. Federal Insurance Office.
"Sec. 314. Covered agreements.
"Sec. 315. Continuing in office.".

SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) CONSULTATION.—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

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