111th Congress

1st Session

H. RES. ___

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.

IN THE HOUSE OF REPRESENTATIVES

December 10, 2009

Mr. Perlmutter, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed.

RESOLUTION

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.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union 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. No further general debate shall be in order.

Sec. 2.(a) The bill, as amended, shall be considered for amendment under the five-minute rule and shall be considered as read. All points of order against provisions in the bill, as amended, are waived.

(b) Notwithstanding clause 11 of rule XVIII, no further amendment to the bill, as amended, shall be in order except the amendments printed in the report of the Committee on Rules accompanying this resolution and amendments en bloc described in section 3 of this resolution.

(c) Each amendment printed in the report of the Committee on Rules shall be considered only in the order printed in the report (except as specified in section 4 of this resolution), may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the 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.

(d) All points of order against amendments printed in the report of the Committee on Rules or amendments en bloc described in section 3 of this resolution are waived except those arising under clause 9 or 10 of rule XXI.

Sec. 3. It shall be in order at any time for the chair of the Committee on Financial Services or his designee to offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules accompanying this resolution not earlier disposed of. Amendments en bloc offered pursuant to this section 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.

Sec. 4. The Chair of the Committee of the Whole may recognize for consideration of any amendment printed in the report of the Committee on Rules accompanying this resolution 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.

Sec. 5. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill, as amended, to the House with such further amendments as may have been adopted. 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 previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

Sec. 6. 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. The Chair may not entertain a motion to strike out the enacting words of the bill (as described in clause 9 of rule XVIII).

Sec. 7. During consideration of H.R. 4173, the Chair may reduce to two minutes the minimum time for electronic voting under clause 6 of rule XVIII and clauses 8 and 9 of rule XX.

Sec. 8. In the engrossment of H.R. 4173, the Clerk is authorized to make technical and conforming changes to amendatory instructions.

111th Congress }
1st Session }

HOUSE OF REPRESENTATIVES

{Report
{
{No. _____

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

---

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

REPORT

[To accompany H. Res. _____]

The Committee on Rules, having had under consideration House Resolution ____, 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 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 Member:

MCGOVERN	NAY
HASTINGS	NAY
MATSUI	NAY
CARDOZA	
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 Member:

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 Member:

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 Member:

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 Member:

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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	YEA
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	NAY
MATSUI	NAY
CARDOZA	NAY
ARCURI	NAY
PERLMUTTER	NAY
PINGREE	NAY
POLIS	NAY
DREIER	
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 Member:

MCGOVERN	
HASTINGS	YEA
MATSUI	YEA
CARDOZA	YEA
ARCURI	YEA
PERLMUTTER	YEA
PINGREE	YEA
POLIS	YEA
DREIER	
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 of the 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 (30 minutes)

homeowner upon denial of loan modification, requires the Department of Treasury to create a homeowner-accessible website with a calculator for NPV analysis of a mortgage, and requires the Department of 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 Victims 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 polices and regulations on small, community financial institutions and help ensue 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) an d 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.

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	(30 minutes)

	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.	
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	(10 minutes)

	Council's proceedings, meetings, discussions, and deliberations.	
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 9Helping 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	(10 minutes)

	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.	
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 monitoring, 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 Consumer 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

118
Rev

AMENDMENT TO H.R. 4173

OFFERED BY _____

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

1 the extent that the subsidiary is engaged
2 in an activity described in such subpara-
3 graph;

Page 15, line 25, strike "a" and insert "any".

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

4 (v) a securities-based swap execution
5 facility that is registered with the Securi-
6 ties and Exchange Commission under the
7 Securities Exchange Act of 1934 (15
8 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:

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

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

11 (A) The Director of the Federal Insurance
12 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:

1 (3) MITIGATION REQUIREMENTS IN CASE OF
2 FOREIGN FINANCIAL PARENTS.—Before requiring
3 the submission of reports from a company that is a
4 foreign financial parent, the Council or the Board
5 shall, to the extent appropriate, coordinate with any
6 appropriate foreign regulator of such company and
7 any appropriate multilateral organization and, when-
8 ever possible, rely on information already being col-
9 lected by such foreign regulator or multilateral orga-
10 nizational 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:

11 (b) AGENCY AUTHORITY TO IMPLEMENT STAND-
12 ARDS.—
13 (1) IN GENERAL.—A Federal financial regu-
14 latory 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:

1 (2) APPLYING STANDARDS TO FOREIGN FINAN-
2 CIAL PARENTS.—In applying standards under para-
3 graph (1) to any foreign financial parent, or to any
4 branch of, subsidiary of, or other operating entity
5 related to such foreign financial parent that operates
6 within the United States, the Federal financial regu-
7 latory agency shall—
8 (A) give due regard to the principles of na-
9 tional treatment and equality of competitive op-
10 portunity; and
11 (B) take into account the extent to which
12 the foreign financial parent is subject to com-
13 parable standards on a consolidated basis in the
14 home country of such foreign financial parent
15 that are administered by a comparable foreign
16 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):

1 (5) The company's importance as a source of
2 credit for low-income, minority, or underserved com-
3 munities and the impact the failure of such company
4 would have on the availability of credit in such com-
5 munities.
6 (6) The extent to which assets are simply man-
7 aged and not owned by the financial company and
8 the extent to which ownership of assets under man-
9 agement 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):

1 (8) The amount and nature of the company's fi-
2 nancial assets.
3 (9) The amount and nature of the company's li-
4 abilities, including the degree of reliance on short-
5 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:

6 (1) APPLICATION OF FEDERAL LAWS.—
7 (A) APPLICATION OF BANK HOLDING COM-
8 PANY ACT AND FEDERAL DEPOSIT INSURANCE
9 ACT.—A financial company subject to stricter
10 standards that does not own a bank (as defined
11 in section 2 of the Bank Holding Company Act
12 of 1956) and that is not a foreign bank or com-
13 pany that is treated as a bank holding company
14 under section 8 of the International Banking
15 Act of 1978 shall be subject to section 4, sub-
16 sections (b), (c), (d), (e), (f), and (g) of section
17 5, and section 8 of the Bank Holding Company
18 Act of 1956, and section 8 of the Federal De-

1 posit Insurance Act in the same manner and to
2 the same extent as if such financial holding
3 company subject to stricter standards were a
4 bank holding company that has elected to be a
5 financial holding company (as such terms are
6 defined in the Bank Holding Company Act of
7 1956), its subsidiaries were subsidiaries of a
8 bank holding company, and the Board was its
9 appropriate Federal banking agency (as such
10 term is defined under the Federal Deposit In-
11 surance Act).
12 (B) BOARD AUTHORITY.—For purposes of
13 administering and enforcing the provisions of
14 this title, the Board may take any action with
15 respect to a financial holding company subject
16 to stricter standards described in subparagraph
17 (A) or its subsidiaries under the authorities de-
18 scribed in subparagraph (A) as if such financial
19 holding company subject to stricter standards
20 were a bank holding company that has elected
21 to be a financial holding company (as such
22 terms are defined in the Bank Holding Com-
23 pany Act of 1956), its subsidiaries were subsidi-
24 aries of a bank holding company, and the
25 Board was its appropriate Federal banking

1 agency (as such term is defined under the Fed-
2 eral Deposit Insurance Act).
3 (2) APPLICATION OF ACTIVITY RESTRICTIONS
4 AND SECTION 6 HOLDING COMPANY REQUIRE-
5 MENTS.—
6 (A) IN GENERAL.—Except as provided in
7 subparagraphs (B) and (C)—
8 (i) a financial holding company sub-
9 ject to stricter standards that conducts ac-
10 tivities that do not comply with section 4
11 of the Bank Holding Company Act shall be
12 required to establish or designate a section
13 6 holding company in accordance with sec-
14 tion 6 of the Bank Holding Company Act
15 of 1956 through which it conducts activi-
16 ties of the company that are determined to
17 be financial in nature or incidental thereto
18 under section 4(k) of the such Act; and
19 (ii) such section 6 holding company
20 shall be the financial holding company sub-
21 ject to stricter standards for purposes of
22 this title.
23 (B) EXCEPTIONS FROM SECTION 6 HOLD-
24 ING COMPANY REQUIREMENTS.—

1 (i) GENERAL REQUIREMENT FOR
2 BOARD TO CONSIDER EXCEPTIONS.—Be-
3 fore such time as a financial holding com-
4 pany subject to stricter standards is re-
5 quired to establish or designate a section 6
6 holding company under section 6 of the
7 Bank Holding Company Act, and in con-
8 sultation with the financial holding com-
9 pany subject to stricter standards and any
10 appropriate Federal or State financial reg-
11 ulators (and, in the case of a financial
12 holding company subject to stricter stand-
13 ards that is an insurance company, the
14 Federal Insurance Office)—
15 (I) the Board shall consider
16 whether to grant any of the exemp-
17 tions from the requirements applicable
18 to section 6 holding companies under
19 section 6(a)(6)(A) of the Bank Hold-
20 ing Company Act of 1956, in accord-
21 ance with that provision; and
22 (II) the Board, at the request of
23 a financial holding company subject to
24 stricter standards that is predomi-
25 nantly engaged in activities that are

1 determined to be financial in nature
2 or incidental thereto under section
3 4(k) of the Bank Holding Company
4 Act, shall consider whether to exempt
5 the financial holding company subject
6 to stricter standards from the require-
7 ment to establish a section 6 holding
8 company, taking into consideration
9 paragraph (2)(D), and the extent to
10 which the exemption would: facilitate
11 the extension of credit to individuals,
12 households and businesses; improve
13 efficiency or customer service or result
14 in other public benefits; potentially
15 threaten the safety and soundness of
16 the financial holding company or any
17 of its subsidiaries; potentially increase
18 systemic risk or threaten the stability
19 of the overall financial system; poten-
20 tially result in unfair competition; and
21 potentially have anticompetitive ef-
22 fects that would not be outweighed by
23 public benefits.
24 (ii) BOARD DETERMINATION NOT TO
25 EXEMPT.—

1 (I) IN GENERAL.—If the Board
2 determines not to exempt the financial
3 holding company subject to stricter
4 standards from the requirement to es-
5 tablish a section 6 holding company,
6 the financial holding company subject
7 to stricter standards shall establish a
8 section 6 holding company within 90
9 days after the Board's determination.
10 (II) EXTENSION OF PERIOD.—
11 The Board may extend the time by
12 which the financial holding company
13 subject to stricter standards is re-
14 quired to establish a section 6 holding
15 company for an additional reasonable
16 period of time, not to exceed 180
17 days.
18 (iii) BOARD DETERMINATION TO EX-
19 EMPT.—
20 (I) IN GENERAL.—If the Board
21 grants the requested exemption from
22 the requirement to establish a section
23 6 holding company, the financial hold-
24 ing company subject to stricter stand-
25 ards shall at all times remain pre-

1 dominantly engaged in activities that
2 are determined to be financial in na-
3 ture or incidental thereto under sec-
4 tion 4(k) of the Bank Holding Com-
5 pany Act of 1956, and shall be the fi-
6 nancial holding company subject to
7 stricter standards for purposes of this
8 title.

9 (II) SUBSEQUENT LOSS OF EX-
10 EMPTION.—Upon a determination by
11 the Board, in consultation with any
12 relevant Federal or State regulators
13 of the financial holding company sub-
14 ject to stricter standards, and, in the
15 case of a financial holding company
16 subject to stricter standards that is an
17 insurance company, the Federal In-
18 surance Office, that the financial
19 holding company subject to stricter
20 standards fails to comply with this
21 subsection, the financial holding com-
22 pany subject to stricter standards
23 shall lose the exemption from the sec-
24 tion 6 holding company requirement
25 and shall establish a section 6 holding

1 company within the time periods de-
2 scribed in clause (ii)(I).
3 (C) ACTIVITIES CONDUCTED ABROAD.—
4 Section 4 of the Bank Holding Company Act of
5 1956 shall not apply to any activities that a for-
6 eign financial holding company subject to strict-
7 er standards conducts solely outside the United
8 States if such activities are conducted solely by
9 a company or other entity that is located out-
10 side the United States.
11 (D) FLEXIBLE APPLICATION.—In applying
12 the activity restrictions and ownership limita-
13 tions of section 4 of the Bank Holding Com-
14 pany Act of 1956 to financial holding compa-
15 nies subject to stricter standards described in
16 paragraph (1)(A), the Board shall flexibly
17 adapt such requirements taking into account
18 the usual and customary practices in the busi-
19 ness sector of the financial company subject to
20 stricter standards so as to avoid unnecessary
21 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):

1 (i) risk-based capital requirements
2 and leverage limits, unless the Board de-
3 termines that such requirements are not
4 appropriate for a financial holding com-
5 pany subject to stricter standards because
6 of such company's activities (such as in-
7 vestment company activities or assets
8 under management) or structure, in which
9 case the Board shall apply other standards
10 that result in appropriately stringent con-
11 trols.

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:

1 (3) APPLICATION OF REQUIRED STANDARDS.—
2 In imposing prudential standards under this section,
3 the Board—
4 (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:

5 (B) shall take into consideration whether
6 and to what extent a financial holding company
7 subject to stricter standards that is not a bank
8 holding company or treated as a bank holding
9 company owns or controls a depository institu-
10 tion and shall adapt the prudential standards
11 applied to such company as appropriate in light
12 of any predominant line of business of such

1 company, including assets under management
2 or other activities for which capital require-
3 ments 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:

1 (j) RULE OF CONSTRUCTION REGARDING CONSUMER
2 PROTECTION STANDARDS.—The prudential standards im-
3 posed or recommended by the Board or the Council under
4 this section shall not be construed as superseding—
5 (1) any consumer protection standards promul-
6 gated under a State or Federal consumer protection
7 law, including the Consumer Financial Protection
8 Agency Act and the Federal Trade Commission Act;
9 or
10 (2) any investor protection standard that pro-
11 tects consumers (including public reporting require-
12 ments) imposed under State or Federal securities
13 laws, including the Securities Act of 1933, the Secu-
14 rities Exchange Act of 1934, the Investment Com-
15 pany Act of 1944, and the Investment Advisors Act
16 of 1944.
17 (k) RULEMAKING AUTHORITY.—The Board may pre-
18 scribe such regulations and issue such orders as the

1 Board, in consultation with the Council, determines to be
2 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:

1 (3) EXCEPTION.—The standards recommended
2 by the Board and adopted by a primary financial
3 regulatory agency pursuant to this section shall not
4 apply to activities that a foreign financial parent
5 conducts solely outside the United States if such ac-
6 tivities are conducted solely by a company or other
7 operating entity that is located outside the United
8 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:

1 (a) CONSTRUCTION.—The authorities

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

2 (b) AGENT RESPONSIBILITIES.—For purposes of this
3 subtitle, the term "agent" means the Board acting under
4 section 1103(c) and coordinating with the Council in exer-
5 cising 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:

6 (f) EFFECTIVE DATE.—Subsection (b) shall take ef-
7 fect on the date of the enactment of this Act .

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

8 (4) FUNCTIONS RELATING TO SUPERVISION OF
9 SAVINGS AND LOAN HOLDING COMPANIES.—
10 (A) TRANSFER OF FUNCTIONS.—All func-
11 tions of the Director of the Office of Thrift Su-

1 pervision relating to the supervision and regula-
2 tion of Savings and Loan Holding Companies
3 are transferred to the Board.
4 (B) BOARD AUTHORITY.—The Board shall
5 succeed to all powers, authorities, rights, and
6 duties that were vested in the Director of the
7 Office of Thrift Supervision under Federal law,
8 including the Home Owners' Loan Act, on the
9 day before the transfer date, relating to the su-
10 pervision and regulation of Savings and Loan
11 Holding Companies.

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

12 (2) in paragraph (2)(E), by striking "and" at
13 the end;

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

14 (4) after paragraph (2)(F), by inserting the fol-
15 lowing new subparagraph:
16 "(G) any savings and loan holding com-
17 pany and any subsidiary of a savings and loan

1 holding company (other than a savings associa-
2 tion); 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):

3 (1) In subsection (a)—
4 (A) in paragraph (1)(A), by striking "Di-
5 rector" and inserting "Board";
6 (B) in paragraph (1)(D), by striking clause
7 (i) and inserting: "(i) In general.—.
8 "(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the term 'savings and
10 loan holding company' means any company
11 that directly or indirectly controls a sav-
12 ings association or that controls any com-
13 pany that is a savings and loan holding
14 company, and that is either—

1 "(I) a fraternal beneficiary soci-
2 ety, as defined in section 501(c)(8) of
3 the Internal Revenue Code of 1986; or
4 "(II) a company that is, together
5 with all of its affiliates on a consoli-
6 dated basis, predominantly engaged in
7 the business of insurance.";
8 (C) in paragraph (1)(F), by striking "Di-
9 rector" and inserting "Board";
10 (D) in paragraph (1), by inserting at the
11 end the following new subparagraph:
12 "(K) BOARD.—The term 'Board' means
13 the Board of Governors of the Federal Reserve
14 System.".
15 (E) in paragraph (2)(D), by striking "Di-
16 rector" and inserting "Board";
17 (F) in paragraph (3)(A), by striking "Di-
18 rector" and inserting "Board"; and
19 (G) in paragraph (4), by striking "Direc-
20 tor" and inserting "Board".
21 (2) In subsection (b), by striking "Director"
22 each place it appears and inserting "Board".
23 (3) In subsection (c)—
24 (A) in paragraph, (2)(F)(i)—

1 (i) by striking "of Governors of the
2 Federal Reserve System"; and
3 (ii) by striking "Director" and insert-
4 ing "Board";
5 (B) in paragraph (2)(G), by striking "Di-
6 rector" and inserting "Board";
7 (C) in paragraph (4)(A), by striking "Di-
8 rector" and inserting "Board";
9 (D) in paragraph (4)(B)—
10 (i) in the heading, by striking "direc-
11 tor" and inserting "Board"; and
12 (ii) by striking "the Director shall"
13 and inserting "the Board shall";
14 (E) in paragraph (4)(C)—
15 (i) in the heading, by striking "direc-
16 tor" and inserting "Board"; and
17 (ii) by striking "the Director may"
18 and inserting "the Board may";
19 (F) in paragraph (5), by striking "Direc-
20 tor" and inserting "Board";
21 (G) in paragraph (6)(D)—
22 (i) in the heading, by striking "direc-
23 tor" and inserting "Board"; and
24 (ii) by striking "Director" each place
25 it appears and inserting "Board";

1 (H) in paragraph (9)(A)(ii), by inserting ",
2 but only if the conditions for engaging in ex-
3 panded financial activities set forth in section
4 4(l) of the Bank Holding Company Act of 1956
5 have been met" after "1956"; and
6 (I) in paragraph (9)(E), by striking "Di-
7 rector" each place it appears and inserting
8 "Board".
9 (4) In subsection (e)—
10 (A) in paragraph (1)(A)—
11 (i) in clause (i), by striking "Direc-
12 tor" and inserting "Board";
13 (ii) in clause (ii), by striking "Direc-
14 tor" and inserting "Board";
15 (iii) in clause (iii), by striking "Direc-
16 tor" each place it appears and inserting
17 "Board"; and
18 (iv) in clause (iv), by striking "Direc-
19 tor" each place it appears and inserting
20 "Board";
21 (B) in paragraph (1)(B), by striking "Di-
22 rector" each place it appears and inserting
23 "Board";

1 (C) in paragraph (2), by striking "Direc-
2 tor" each place it appears and inserting
3 "Board";
4 (D) in paragraph (3), by striking "Direc-
5 tor" and inserting "Board";
6 (E) in paragraph (4)(A), by striking "Di-
7 rector" and inserting "Board"; and
8 (F) in paragraph (5), by striking "Direc-
9 tor" each place it appears and inserting
10 "Board".
11 (5) In subsection (f), by striking "Director"
12 each place it appears and inserting "Board".
13 (6) In subsection (g), by striking "Director"
14 each place it appears and inserting "Board".
15 (7) In subsection (h)—
16 (A) in paragraph (2), by striking "Direc-
17 tor" and inserting "Board"; and
18 (B) in paragraph (3), by striking "Direc-
19 tor" and inserting "Board".
20 (8) In subsection (i)—
21 (A) in paragraph (1)(A), by striking "Di-
22 rector" and inserting "Board";
23 (B) in paragraph (2)(B), by striking "Di-
24 rector" and inserting "Board";

1 (C) in paragraph (2)(F), by striking "Di-
2 rector" and inserting "Board";
3 (D) in paragraph (3)(B), by striking "Di-
4 rector" and inserting "Board";
5 (E) in paragraph (3)(F), by striking "Di-
6 rector" and inserting "Board";
7 (F) in paragraph (4), by striking "Direc-
8 tor" and inserting "Board"; and
9 (G) in paragraph (5), by striking "Direc-
10 tor" and inserting "Board".
11 (9) In subsection (j), by striking "Director"
12 each place it appears and inserting "Board".
13 (10) In subsection (l)—
14 (A) in paragraph (1), by striking "Direc-
15 tor" and inserting "Board, in consultation with
16 the Comptroller of the Currency,"; and
17 (B) in paragraph (2), by striking "Direc-
18 tor" and inserting "Board, in consultation with
19 the Comptroller of the Currency,".

Page 166, after line 18 insert the following:

20 (13) In subsections (p), (q), (r), and (s), by
21 striking "Director" each place it appears and insert-
22 ing "Board".

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

1 "(7) VALUATION.—

2 "(A) IN GENERAL.—The Board shall con-
3 sider waived dividends in determining an appro-
4 priate exchange ratio in the event of a full con-
5 version to stock form.

6 "(B) EXCEPTION.—In the case of a sav-
7 ings association which has reorganized into a
8 mutual thrift holding company under section
9 10(b) of the Home Owners' Loan Act and has
10 issued minority stock either from its mid-tier
11 stock holding company or its subsidiary stock
12 savings association prior to December 1, 2009,
13 the Board shall not consider waived dividends
14 in determining an appropriate exchange ratio in
15 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:

1 **SEC. 1257. EFFECTIVE DATE.**

2 Except as otherwise provided in this subtitle, the
3 amendments made by sections 1221 through section 1253
4 and 1256 and subsections (a), (b), and (c)(1) of section
5 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:

6 (B) in subparagraph (F)(i), by inserting
7 before the semicolon the following: ", including
8 issuing credit cards and other credit devices (in-
9 cluding virtual or intangible devices) that func-
10 tion as credit cards";

1 (C) in subparagraph (F)(v), by inserting
2 before the semicolon the following: ", other
3 than loans that otherwise meet the require-
4 ments of this subparagraph and are made to
5 businesses that meet the criteria for a small
6 business concern to be eligible for business
7 loans under regulations established by the
8 Small Business Administration under part 121
9 of title 13, Code of Federal Regulations"; and
10 (D) by striking subparagraph (H) and in-
11 serting the following:
12 "(H) An industrial loan company, indus-
13 trial bank, or other similar institution which—
14 "(i) is an institution organized under
15 the laws of a State which, on March 5,
16 1987, had in effect or had under consider-
17 ation in such State's legislature a statute
18 which required or would require such insti-
19 tution to obtain insurance under the Fed-
20 eral Deposit Insurance Act;
21 "(ii) either—
22 "(I) does not accept demand de-
23 posits that the depositor may with-
24 draw by check or similar means for
25 payment to third parties;

1 "(II) has total assets of less than
2 $100,000,000; or
3 "(III) the control of which is not
4 acquired by any company after Au-
5 gust 10, 1987;
6 "(iii) predominantly provides financial
7 products and services to current and
8 former members of the military and their
9 families; and
10 "(iv) is controlled by a savings and
11 loan holding company, as defined in sec-
12 tion 10(a) of the Home Owners' Loan Act.
13 This subparagraph shall cease to apply to any
14 institution which permits any overdraft (includ-
15 ing any intraday overdraft), or which incurs
16 any such overdraft in such institution's account
17 at a Federal Reserve bank, on behalf of an af-
18 filiate, if such overdraft is not the result of an
19 inadvertent computer or accounting error that
20 is beyond the control of both the institution and
21 the affiliate, or that is otherwise permissible for
22 a bank controlled by a company described in
23 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:

1 "(ii) conduct all such activities which
2 are permissible for a financial holding com-
3 pany, as determined under section 4(k),
4 through such section 6 holding company,
5 other than—
6 "(I) internal financial activities
7 conducted for such company or any
8 affiliate, including, but not limited to
9 internal treasury, investment, and em-
10 ployee benefit functions, provided that
11 with respect to any internal financial
12 activity engaged in for the company or
13 an affiliate and a nonaffiliate during
14 the year prior to date of enactment,
15 the company (or an affiliate not a
16 subsidiary of the section 6 company)
17 may continue to engage in that activ-
18 ity so long as the at least two-thirds
19 of the assets or two-thirds of the reve-
20 nues generated from the activity are
21 from or attributable to the company
22 or an affiliate, subject to review by
23 the Board to determine whether en-
24 gaging in such activity presents undue

1 risk to the section 6 company or
2 undue systemic risk; and
3 "(II) financial activities involving
4 the provision of credit for the pur-
5 chase or lease of products or services
6 from an affiliate or for the purchase
7 or lease of products produced by an
8 affiliate of such section 6 holding
9 company that is not a subsidiary of
10 such section six holding company, in
11 accordance with regulations prescribed
12 by or orders issued by the Board, pur-
13 suant 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:

14 "(i) on the date of enactment of the
15 Financial Stability Improvement Act of
16 2009, a unitary savings and loan holding
17 company that continues to control not
18 fewer than one savings association that it
19 controlled on May 4, 1999, or that it ac-
20 quired pursuant to an application pending
21 before the Office of Thrift Supervision on
22 or before that date, and that became a
23 bank for purposes of the Bank Holding

1 Company Act as a result of the enactment
2 of section 1301(a)(3) of the Financial Sta-
3 bility 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:

4 "(8) UNITARY SAVINGS AND LOAN HOLDING
5 COMPANY DEFINED.—For purposes of this sub-
6 section, the term 'unitary savings and loan holding
7 company' means a company that was a savings and
8 loan holding company on May 4, 1999 (as then de-
9 fined), or that became a savings and loan holding
10 company pursuant to an application pending before
11 the Office of Thrift Supervision on or before that
12 date, and—
13 "(A) that controls—
14 "(i) only 1 savings association; or
15 "(ii) more than 1 savings association,
16 if all, or all but 1, of the savings associa-
17 tion subsidiaries of such company were ini-
18 tially acquired by the company pursuant to
19 a supervisory transaction under section
20 1823(c), 1823(i), or 1823(k) of this title,

1 or section 408(m) of the National Housing
2 Act (12 U.S.C. 1730a(m));
3 "(B) all of the savings association subsidi-
4 aries of such company are qualified thrift lend-
5 ers (as determined under section 10 of the
6 Home Owners' Loan Act); and
7 "(C) that continues to control not fewer
8 than 1 savings association that it controlled on
9 May 4, 1999, or that it acquired pursuant to an
10 application pending before the Office of Thrift
11 Supervision on or before that date.".

Page 220, after line 25, insert the following:

12 (8) UNITARY SAVINGS AND LOAN HOLDING
13 COMPANY DEFINED.—Solely for purposes of this
14 subsection, the term "unitary savings and loan hold-
15 ing company" means a company that was a savings
16 and loan holding company on May 4, 1999 (as then
17 defined), or that became a savings and loan holding
18 company pursuant to an application pending before
19 the Office of Thrift Supervision on or before that
20 date, and—
21 (A) that controls —
22 (i) only 1 savings association; or
23 (ii) more than 1 savings association, if
24 all, or all but 1, of the savings association

1 subsidiaries of such company were initially
2 acquired by the company pursuant to a su-
3 pervisory transaction under section
4 1823(c), 1823(i), or 1823(k) of this title,
5 or section 408(m) of the National Housing
6 Act (12 U.S.C. 1730a(m));
7 (B) all of the savings association subsidi-
8 aries of such company are qualified thrift lend-
9 ers (as determined under section 10 of the
10 Home Owners' Loan Act); and
11 (C) that continues to control not fewer
12 than 1 savings association that it controlled on
13 May 4, 1999, or that it acquired pursuant to an
14 application pending before the Office of Thrift
15 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:

16 (B) A company that is required to form a
17 section a section 6 holding company shall con-
18 duct all such activities which are permissible for
19 a financial holding company, as determined

1 under section 4(k), through such section 6 hold-
2 ing company, other than—
3 (i) internal financial activities con-
4 ducted for such company or any affiliate,
5 including, but not limited to internal treas-
6 ury, investment, and employee benefit
7 functions, provided that with respect to
8 any internal financial activity engaged in
9 for the company or an affiliate and a non-
10 affiliate during the year prior to date of
11 enactment, the company (or an affiliate
12 not a subsidiary of the section 6 company)
13 may continue to engage in that activity so
14 long as the at least ⅔ of the assets or ⅔
15 of the revenues generated from the activity
16 are from or attributable to the company or
17 an affiliate, subject to review by the Board
18 to determine whether engaging in such ac-
19 tivity presents undue risk to the section 6
20 company or undue systemic risk; and
21 (ii) financial activities involving the
22 provision of credit for the purchase or
23 lease of products or services from an affil-
24 iate or for the purchase or lease of prod-
25 ucts produced by an affiliate of such sec-

1 tion 6 holding company that is not a sub-
2 sidiary of such section 6 holding company,
3 in accordance with regulations prescribed
4 by or orders issued by the Board, pursuant
5 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:

6 "(ii) subject to the provisions of this
7 Act and other Federal law as provided in
8 section 1103(g) of the Financial Stability
9 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 hold-

ing 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):

1 **SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE AC-**
2 **QUISITIONS.**
3 (a) AMENDMENTS TO BANK HOLDING COMPANY ACT
4 OF 1956.—
5 (1) CONCENTRATION LIMIT FOR BANK HOLDING
6 COMPANIES.—Section 3(d)(2)(A) of the Bank Hold-
7 ing Company Act (12 U.S.C. 1842(d)(2)(A)) is
8 amended by striking "paragraph (1)(A)" and insert-
9 ing "subsection (a)".
10 (2) TECHNICAL CORRECTION RELATING TO
11 CERTAIN SAVINGS BANKS.—Section 4 of the Bank
12 Holding Company Act is amended by striking sub-
13 section (i) and inserting the following new sub-
14 section:
15 "(i) [Repealed]".
16 (b) AMENDMENTS TO FEDERAL DEPOSIT INSUR-
17 ANCE ACT.—
18 (1) IN GENERAL.—Section 18(c) of the Federal
19 Deposit Insurance Act (12 U.S.C. 1828(c)) is
20 amended—
21 (A) by redesignating paragraph (12) as
22 paragraph (13); and
23 (B) by inserting after paragraph (11) the
24 following new paragraph:
25 "(12) NATIONWIDE DEPOSIT CAP.—The respon-
26 sible agency may not approve an application for an

1 interstate merger transaction if the resulting insured
2 depository institution (including all insured deposi-
3 tory institutions which are affiliates of the resulting
4 insured depository institution), upon consummation
5 of the transaction, would control more than 10 per-
6 cent of the total amount of deposits of insured de-
7 pository institutions in the United States.".

8 (2) PARALLEL REQUIREMENT.—Subparagraph
9 (A) of section 44(b)(2) of the Federal Deposit Insur-
10 ance Act 1831u(b)(2)(A)) is amended to read as fol-
11 lows:

12 "(A) NATIONWIDE CONCENTRATION LIM-
13 ITS.—The responsible agency may not approve
14 an application for an interstate merger trans-
15 action involving 2 or more insured depository
16 institutions if the resulting insured depository
17 institution (including all insured depository in-
18 stitutions which are affiliates of such institu-
19 tion), upon consummation of the transaction
20 would control more than 10 percent of the total
21 amount of deposits of insured depository insti-
22 tutions in the United States".

23 (c) AMENDMENTS TO HOME OWNERS' LOAN ACT.—
24 Section 10(e)(2) of the Home Owners' Loan Act
25 1467a(e)(2)) is amended—

1 (1) by striking "or at the end of subparagraph
2 (C)";
3 (2) by striking the period at the end of sub-
4 paragraph (D) and inserting "; or"; and
5 (3) by inserting after subparagraph (D), the
6 following new subparagraph:
7 "(E) in the case of an application involving
8 an interstate acquisition, if the applicant (in-
9 cluding all insured depository institutions which
10 are affiliates of the applicant) controls, or upon
11 consummation of the acquisition for which such
12 application is filed would control, more than 10
13 percent of the total amount of deposits of in-
14 sured depository institutions in the United
15 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:

1 (C) that is not a Federal home loan bank,
2 the Federal National Mortgage Association, or
3 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:

4 (1) VOTE REQUIRED.—
5 (A) IN GENERAL.—At the request of the
6 Secretary, the Chairman of the Federal Reserve
7 Board, or the appropriate regulatory agency,
8 the Board and the appropriate regulatory agen-

1 cy shall, or on their own initiative the Board
2 and the appropriate regulatory agency may,
3 consider whether to make the written rec-
4 ommendation provided for in paragraph (2)
5 with respect to a financial company.
6 (B) 2/3 AGREEMENT.—Any recommenda-
7 tion under subparagraph (A) shall be made
8 upon a vote of not less than two-thirds of the
9 members of the Federal Reserve Board then
10 serving and not less than two thirds of any
11 members of the board or commission then serv-
12 ing of the appropriate regulatory agency, as ap-
13 plicable.

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:

1 (3) EXTENSION OF TIME LIMIT.—The time
2 limit established in paragraph (2) may be extended
3 by the Secretary for up to 1 additional year if—
4 (A) the Corporation has not completed the
5 dissolution of the company within the time pro-
6 vided in paragraph (2); and
7 (B) the Secretary certifies in writing that
8 continuation of the receivership is necessary—
9 (i) to protect the best interests of the
10 taxpayers of the United States; and
11 (ii) to protect the stability of the fi-
12 nancial system and the economy of the
13 United States.
14 (4) FURTHER EXTENSION.—The time limit, as
15 extended in paragraph (3), may be extended for up
16 to 1 additional year if—
17 (A) the conditions of paragraph (3) are
18 met; and
19 (B) the Corporation submits a report to
20 the Congress, no later than 60 days before the
21 receivership will expire under the extended limit
22 under paragraph (3), that describes in detail—
23 (i) the basis for the determination by
24 the Corporation that a second extension is
25 necessary; and

1 (ii) the specific plan of the Corpora-
2 tion for concluding the receivership before
3 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:

1 (J) the Consumer Financial Protection
2 Agency,
3 (K) the Federal Insurance Office,

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

1 **SEC. 1802. FEDERAL HOUSING FINANCE AGENCY ADVISORY**
2 **ROLE IN FIEC.**

3 After section 1007 of the Federal Financial Institu-
4 tions Examination Council Act of 1987 (12 U.S.C. 3306)
5 insert the following new section:

6 **"SEC. 1007A. FEDERAL HOUSING FINANCE AGENCY ADVI-**
7 **SORY ROLE.**

8 "Whenever the Council takes any actions with respect
9 to issues that relate to the Federal National Mortgage As-
10 sociation, the Federal Home Loan Mortgage Corporation,
11 or the Federal home loan banks, the Federal Housing Fi-
12 nance Agency shall participate in the Council's pro-
13 ceedings 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

1 (E) subject to comprehensive consolidated
2 supervision by a foreign regulator,
3 may register with the Board to become supervised,
4 pursuant to paragraph (2). Any securities holding
5 company filing such a registration shall be super-
6 vised in accordance with this section and comply
7 with the rules and orders prescribed by the Board
8 applicable to supervised securities holding compa-
9 nies.
10 (2) REGISTRATION AS A SUPERVISED SECURI-
11 TIES HOLDING COMPANY.—A securities holding com-
12 pany described in paragraph (1) shall register by fil-
13 ing with the Board such information and documents
14 concerning such securities holding company as the
15 Board, by regulation, may prescribe as necessary or
16 appropriate in furtherance of the purposes of this
17 section. Such supervision shall become effective 45
18 days after the date of receipt of such registration by
19 the Board or within such shorter time period as the
20 Board, by rule or order, may determine.
21 (b) SUPERVISION OF SECURITIES HOLDING COMPA-
22 NIES.—
23 (1) RECORDKEEPING AND REPORTING.—
24 (A) IN GENERAL.—Every supervised secu-
25 rities holding company and each affiliate of

1 such company shall make and keep for pre-
2 scribed periods such records, furnish copies of
3 records, and make such reports, as the Board
4 determines to be necessary or appropriate for
5 the Board to carry out the purposes of this sec-
6 tion, prevent evasions, and monitor compliance
7 by the company or affiliate with applicable pro-
8 visions of law.

9 (B) FORM AND CONTENTS.—Such records
10 and reports shall be prepared in such form and
11 according to such specifications (including cer-
12 tification by a registered public accounting
13 firm), as the Board may require and shall be
14 provided promptly at any time upon request by
15 the Board. Such records and reports may in-
16 clude—

17 (i) a balance sheet and income state-
18 ment;

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

22 (iii) an independent auditor's report
23 attesting to the supervised securities hold-
24 ing company's compliance with its internal

1 risk management and internal control ob-
2 jectives; and
3 (iv) reports concerning the extent to
4 which the company or affiliate has com-
5 plied with the provisions of this section
6 and any regulations prescribed and orders
7 issued under this section.
8 (2) USE OF EXISTING REPORTS.—
9 (A) IN GENERAL.—The Board shall, to the
10 fullest extent possible, accept reports in fulfill-
11 ment of the requirements under this paragraph
12 that the supervised securities holding company
13 or its affiliates have been required to provide to
14 another appropriate regulatory agency or self-
15 regulatory organization.
16 (B) AVAILABILITY.—A supervised securi-
17 ties holding company or an affiliate of such
18 company shall provide to the Board, at the re-
19 quest of the Board, any report referred to in
20 subparagraph (A), as permitted by law.
21 (3) EXAMINATION AUTHORITY.—
22 (A) FOCUS OF EXAMINATION AUTHOR-
23 ITY.—The Board may make examinations of
24 any supervised securities holding company and
25 any affiliate of such company to carry out the

1 purposes of this subsection, prevent evasions
2 thereof, and monitor compliance by the com-
3 pany or affiliate with applicable provisions of
4 law.

5 (B) DEFERENCE TO OTHER EXAMINA-
6 TIONS.—For purposes of this subparagraph, the
7 Board shall, to the fullest extent possible, use
8 the reports of examination made by other ap-
9 propriate Federal or State regulatory authori-
10 ties with respect to any functionally regulated
11 subsidiary, as defined under section 5(c)(1) of
12 the Bank Holding Company Act of 1956 (12
13 U.S.C. 1844(c)(1)), or an institution described
14 in subparagraphs (D) or (G) of section
15 1841(c)(2).

16 (c) CAPITAL AND RISK MANAGEMENT.—

17 (1) The Board shall, by regulation or order,
18 prescribe capital adequacy and other risk manage-
19 ment standards for a supervised securities holding
20 company appropriate to protect the safety and
21 soundness of the company and address the risks
22 posed to financial stability by a supervised securities
23 holding company. Standards imposed under this sub-
24 paragraph shall take account of differences among
25 types of business activities and—

1 (A) the amount and nature of the com-
2 pany's financial assets;
3 (B) the amount and nature of the com-
4 pany's liabilities, including the degree of reli-
5 ance on short-term funding;
6 (C) the extent and nature of the company's
7 off-balance sheet exposures;
8 (D) the extent and nature of the com-
9 pany's transactions and relationships with other
10 financial companies;
11 (E) the company's importance as a source
12 of credit for households, businesses, and State
13 and local governments and as a source of li-
14 quidity for the financial system; and
15 (F) the nature, scope, and mix of the com-
16 pany's activities.
17 (2) In imposing standards under this sub-
18 section, the Board may differentiate among super-
19 vised securities holding companies on an individual
20 basis or by category, taking into consideration the
21 criteria specified above.
22 (3) Any capital requirements imposed under
23 this subsection shall not take effect until the expira-
24 tion of 180 days after a supervised securities holding
25 company is provided notice of such requirement.

1 (d) OTHER PROVISIONS.—

2 (1) Subsections (b), (c) through (s), and (u) of
3 section 8 of the Federal Deposit Insurance Act shall
4 apply to any supervised securities holding company,
5 and to any subsidiary (other than a bank) of a su-
6 pervised securities holding company, in the same
7 manner as they apply to a bank holding company.
8 For purposes of applying such subsections to a su-
9 pervised securities holding company or a subsidiary
10 (other than a bank) of a supervised securities hold-
11 ing company, the Board shall be considered the ap-
12 propriate Federal banking agency for the supervised
13 securities holding company or subsidiary.

14 (2) Except as the Board may otherwise provide
15 by regulation or order, a supervised securities hold-
16 ing company shall be subject to the provisions of the
17 Bank Holding Company Act of 1956 (12 U.S.C.
18 1841 et seq.) in the same manner and to the same
19 extent that bank holding companies are subject to
20 such provisions, except that any such supervised se-
21 curities holding company shall not by reason of this
22 subparagraph be deemed a bank holding company
23 for purposes of section 4 of the Bank Holding Com-
24 pany Act of 1956.

1 (e) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:
3 (1) SECURITIES HOLDING COMPANY.—The term
4 "securities holding company" means—
5 (A) any person other than a natural per-
6 son that owns or controls one or more brokers
7 or dealers as defined in section 3 of the Securi-
8 ties Exchange Act; and
9 (B) the associated persons of the securities
10 holding company.
11 (2) SUPERVISED SECURITIES HOLDING COM-
12 PANY.—The term "supervised securities holding
13 company" means any securities holding company
14 that is supervised by the Board pursuant to this sec-
15 tion.
16 (3) OTHER BANKING TERMS.—The terms "af-
17 filiate", "bank", "bank holding company", "com-
18 pany", "control", "savings association", and "sub-
19 sidiary" have the same meanings as in section 2 of
20 the Bank Holding Company Act of 1956.
21 (4) INSURED BANK.—The term "insured bank"
22 has the same meaning as in section 13 of the Fed-
23 eral Deposit Insurance Act.

1 (5) FOREIGN BANK.—The term "foreign bank"
2 has the same meaning as in section 1(b)(7) of the
3 International Banking Act of 1978.
4 (6) ASSOCIATED PERSONS.—The terms "person
5 associated with a securities holding company" and
6 "associated person of a securities holding company"
7 mean any person directly or indirectly controlling,
8 controlled by, or under common control with, a secu-
9 rities holding company.

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

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

10 (13) DEPOSIT-TAKING, MONEY ACCEPTANCE,
11 OR MONEY MOVEMENT ACTIVITY.—The term "de-
12 posit-taking, money acceptance, or money movement
13 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:

14 (N) Section 626 of the Omnibus Appro-
15 priations Act, 2009 (Public Law 111–8).

1 (O) The Unlawful Internet Gambling En-
2 forcement 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:

3 (ix) Financial data processing by any
4 technological means, including providing
5 data processing, access to or use of data-
6 bases or facilities, or advice regarding
7 processing or archiving, if the data to be
8 processed, furnished, stored, or archived
9 are financial, banking, or economic, except
10 that it shall not be considered a "financial

1 activity" with respect to financial data
2 processing—
3 (I) to the extent the person is
4 providing interactive computer service,
5 as defined in section 230 of the Com-
6 munications Act of 1934 (47 U.S.C.
7 230); or
8 (II) if the person—
9 (aa) unknowingly or inciden-
10 tally transmits, processes, or
11 stores financial data in a manner
12 that such data is undifferentiated
13 from other types of data that the
14 person transmits, processes, or
15 stores;
16 (bb) does not provide to any
17 consumer a consumer financial
18 product or service in connection
19 with or relating to in any manner
20 financial data processing; and
21 (cc) does not provide a ma-
22 terial service to any covered per-
23 son in connection with the provi-
24 sion of a consumer financial
25 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:

1 (C) an investment company that—
2 (i) is required to be registered under
3 the Investment Company Act of 1940; or
4 (ii) is excepted from the definition of
5 investment company under section 3(c) of
6 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 (1) APPOINTMENT.—The Director may fix the
2 number of, and appoint and direct, all employees of
3 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:

1 (2) an analysis of the major problems con-
2 sumers of financial products and services were con-
3 fronted with during the preceding year, including a
4 description of the nature of such problems, and rec-
5 ommendations for such administrative and legislative
6 action as may be appropriate to resolve such prob-
7 lems;

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

8 (6) an analysis of the Agency's efforts to in-
9 crease workforce and contracting diversity consistent
10 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:

1 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
2 SELLERS OF NONFINANCIAL SERVICES.—
3 (1) IN GENERAL.—Notwithstanding any provi-
4 sion of this title (other than paragraph (4)) and sub-

1 ject to paragraph (2), the Director and the Agency
2 may not exercise any rulemaking, supervisory, en-
3 forcement or other authority, including authority to
4 order assessments, under this title with respect to—
5 (A) credit extended directly by a merchant,
6 retailer, or seller of nonfinancial goods or serv-
7 ices to a consumer, in a case in which the good
8 or service being provided is not itself a con-
9 sumer financial product or service, exclusively
10 for the purpose of enabling that consumer to
11 purchase such goods or services directly from
12 the merchant, retailer, or seller of nonfinancial
13 services; or
14 (B) collection of debt, directly by the mer-
15 chant, retailer, or seller of nonfinancial services,
16 arising from such credit extended.
17 In the application of this paragraph, the extension
18 of credit and the collection of debt described in sub-
19 paragraphs (A) and (B), respectively, shall not be
20 considered a consumer financial product or service.
21 (2) EXCEPTION FOR EXISTING AUTHORITY.—
22 The Director may exercise any rulemaking authority
23 regarding an extension of credit described in para-
24 graph (1)(A) or the collection of debt arising from
25 such extension, as may be authorized by the enumer-

1 ated consumer laws or any law or authority trans-
2 ferred under subtitle F or H.
3 (3) RULE OF CONSTRUCTION.—No provision of
4 this title shall be construed as modifying, limiting,
5 or superseding the authority of the Federal Trade
6 Commission or any agency other than the Agency
7 with respect to credit extended, or the collection of
8 debt arising from such extension, directly by a mer-
9 chant or retailer to a consumer exclusively for the
10 purpose of enabling that consumer to purchase
11 goods or services directly from the merchant or re-
12 tailer.
13 (4) EXCLUSION NOT APPLICABLE TO CERTAIN
14 CREDIT TRANSACTIONS.—Paragraph (1) shall not
15 apply to—
16 (A) any credit transaction, including the
17 collection of the debt arising from such exten-
18 sion, in which the merchant, retailer, or seller
19 of nonfinancial services assigns, sells, or other-
20 wise conveys such debt owed by the consumer
21 to another person; or
22 (B) any credit transaction—
23 (i) in which the credit provided sig-
24 nificantly exceeds the market value of the
25 product or service provided; and

1 (ii) with respect to which the Director
2 finds that the sale of the product or service
3 is done as a subterfuge so as to evade or
4 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:

5 (C) any credit transaction involving a per-
6 son who operates a line of business that in-
7 volves the extension of retail credit or retail
8 leases involving motor vehicles, if—
9 (i) the extension of retail credit or re-
10 tail leases is provided directly to con-
11 sumers; and
12 (ii) the contracts governing such ex-
13 tension of retail credit or retail leases are
14 not assigned to a third party finance or
15 leasing source, except on a de minimis
16 basis.

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

1 (d) PERSONS REGULATED BY A STATE SECURITIES
2 COMMISSION.—
3 (1) IN GENERAL.—No provision of this title
4 shall be construed as altering, amending, or affect-
5 ing the authority of any securities commission (or
6 any agency or office performing like functions) of
7 any State to adopt rules, initiate enforcement pro-
8 ceedings, or take any other action with respect to a
9 person regulated by any securities commission (or
10 any agency or office performing like functions) of
11 any State. Except as permitted in paragraph (2) and
12 subsection (m), the Director and the Agency shall
13 have no authority to exercise any power to enforce
14 this title with respect to a person regulated by any
15 securities commission (or any agency or office per-
16 forming like functions) of any State, but only to the
17 extent that the person acts in such regulated capac-
18 ity.
19 (2) DESCRIPTION OF ACTIVITIES..—Paragraph
20 (1) shall not apply to any person to the extent such
21 person is engaged in any financial activity described
22 in any subparagraph of section 101(19) or is other-
23 wise subject to any enumerated consumer law or any
24 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:

1 (3) PRESERVATION OF CERTAIN AUTHORI-
2 TIES.—No provision of this title shall be construed
3 as limiting the authority of the Director and the
4 Agency from exercising powers under this Act with
5 respect to a person, other than a person regulated
6 by a State insurance regulator, who provides a prod-
7 uct or service for or on behalf of a person regulated
8 by a State insurance regulator in connection with a
9 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):

10 (3) CERTAIN ACTIVITIES NOT EXCLUDED.—
11 (A) IN GENERAL.—In no event shall para-
12 graph (1) apply to any activity which involves
13 the sale of securities or extension of credit
14 which is provided by a person described in para-
15 graph (1)(A).

1 (B) DEFINITION.—For purposes of sub-
2 paragraph (A), the term "extension of credit"
3 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:

4 (l) EXCLUSION FOR PAWNBROKERS.—
5 (1) IN GENERAL.—The Director and the Agen-
6 cy may not exercise any rulemaking, supervisory, en-
7 forcement, or other authority, including authority to
8 order assessments, under this title with respect to
9 any pawnbroker licensed by a State or political sub-
10 division thereof, a territory of the United States, or
11 the District of Columbia, but only to the extent that
12 such person acts in such capacity and provides ei-
13 ther—
14 (A) non-recourse credit secured by a
15 possessory security interest in tangible goods
16 physically delivered by the consumer to the

1 pawnbroker for which the consumer does not
2 provide a written or electronic promise, order or
3 authorization to pay, or in any other manner
4 authorize a debit of a deposit account, prior to
5 or contemporaneously with the disbursement of
6 the original proceeds; or
7 (B) credit or any other financial activity
8 issued directly by a pawnbroker to a consumer,
9 in a case in which the good or service being
10 provided is not itself a consumer financial prod-
11 uct or service, exclusively for the purpose of en-
12 abling that consumer to purchase goods or serv-
13 ices directly from the pawnbroker.
14 (2) RULE OF CONSTRUCTION.—
15 (A) FTC AUTHORITY PRESERVED.—Ex-
16 cept as provided in subparagraph (B), no provi-
17 sion of this title shall be construed as modi-
18 fying, limiting, or superseding the authority of
19 the Federal Trade Commission with respect to
20 the activities described under paragraph (1).
21 (B) EXERCISE OF RULEMAKING AUTHOR-
22 ITY.—The Director may exercise any rule-
23 making authority regarding the activities de-
24 scribed in paragraph (1) only as may be author-
25 ized by the enumerated consumer laws or any

1 law or authority transferred under subtitle F or
2 H.
3 (m) EXCLUSION FOR CERTAIN CONSUMER REPORT-
4 ING AGENCIES.—
5 (1) IN GENERAL.—Except as permitted in para-
6 graph (2), the Director and the Agency may not ex-
7 ercise any rulemaking, supervisory, enforcement or
8 other authority, including authority to order assess-
9 ments, over a person that is a consumer reporting
10 agency, as such term is defined in section 603(f) of
11 the Fair Credit Reporting Act (15 U.S.C. 1681a(f)),
12 but only to the extent that such consumer reporting
13 agency furnishes a consumer report to another per-
14 son that it has reason to believe intends to use the
15 information for employment purposes, including for
16 security investigations, government licensing and
17 evaluating a consumer's residential or tenant his-
18 tory.
19 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
20 (1) shall not apply to any person described in such
21 paragraph to the extent such person is engaged in
22 any financial activity described in any subparagraph
23 of section 4002(19) or is otherwise subject to any of
24 the enumerated consumer laws or the authorities
25 transferred under subtitle F or H.

1 (n) LIMITED AUTHORITY OF THE AGENCY TO OB-
2 TAIN INFORMATION.—Notwithstanding subsections (a),
3 (f), (g), (h), (i), and (k), the Director may request or re-
4 quire information from any person subject to or described
5 in any such subsection in order to carry out the respon-
6 sibilities and functions of the Agency and in accordance
7 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:

8 (c) UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR
9 PRACTICES DEFINED.—
10 (1) UNFAIR ACTS OR PRACTICES.—Any deter-
11 mination by the Director and the Agency that an act
12 or practice is unfair shall be consistent with the
13 standard set forth under section 5 of the Federal
14 Trade Commission Act and with the policy state-
15 ment adopted by the Federal Trade Commission

1 pursuant to section 5 of the Federal Trade Commis-
2 sion Act and dated December 17, 1980.
3 (2) DECEPTIVE ACTS OR PRACTICES.—Any de-
4 termination by the Director and the Agency that an
5 act or practice is deceptive shall be consistent with
6 the policy statement adopted by the Federal Trade
7 Commission pursuant to section 5 of the Federal
8 Trade Commission Act and dated October 14, 1983.
9 (3) ABUSIVE ACTS OR PRACTICES.—The Direc-
10 tor and the Agency may determine that an act or
11 practice is abusive only if the Director finds that—
12 (A) the act or practice is reasonably likely
13 to result in a consumer's inability to under-
14 stand the terms and conditions of a financial
15 product or service or to protect their own inter-
16 ests in selecting or using a financial product or
17 service; and
18 (B) the widespread use of the act or prac-
19 tice is reasonably likely to contribute to insta-
20 bility 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):

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

5 **SEC. 4507. EMPLOYEE PROTECTION.**

6 (a) No covered person shall terminate or in any other
7 way discriminate against, or cause to be terminated or dis-
8 criminated against, any covered employee or any author-
9 ized representative of covered employees by reason of the
10 fact that such employee or representative whether at the
11 employee's initiative or in the ordinary course of the em-

1 ployee's duties (or any person acting pursuant to a request
2 of the employee) has—
3 (1) provided information to the Agency or to
4 any other state, local, federal, or tribal government
5 entity, filed, instituted or caused to be filed or insti-
6 tuted any proceeding under this title, any enumer-
7 ated consumer law, any law for which authorities
8 were transferred by subtitles F and H, or has testi-
9 fied or is about to testify in any proceeding resulting
10 from the administration or enforcement of the provi-
11 sions of this title; or
12 (2) objected to, or refused to participate in, any
13 activity, policy, practice, or assigned task that the
14 employee (or other such person) reasonably believed
15 to be in violation of any law, rule, or regulation, or
16 to be unfair, deceptive, or abusive and likely to cause
17 specific and substantial injury to one or more con-
18 sumers.
19 (b)(1) A person who believes that he or she has been
20 discharged or otherwise discriminated against by any per-
21 son in violation of subsection (a) may, not later than 180
22 days after the date on which such violation occurs, file
23 (or have any person file on his or her behalf) a complaint
24 with the Secretary of Labor alleging such discharge or dis-
25 crimination and identifying the person responsible for

1 such act. Upon receipt of such a complaint, the Secretary
2 shall notify, in writing, the person named in the complaint
3 of the filing of the complaint, of the allegations contained
4 in the complaint, of the substance of evidence supporting
5 the complaint, and of the opportunities that will be af-
6 forded to such person under paragraph (2).

7 (2)(A) Not later than 60 days after the date of re-
8 ceipt of a complaint filed under paragraph (1) and after
9 affording the complainant and the person named in the
10 complaint an opportunity to submit to the Secretary a
11 written response to the complaint and an opportunity to
12 meet with a representative of the Secretary to present
13 statements from witnesses, the Secretary shall initiate an
14 investigation and determine whether there is reasonable
15 cause to believe that the complaint has merit and notify,
16 in writing, the complainant and the person alleged to have
17 committed a violation of subsection (a) of the Secretary's
18 findings. If the Secretary concludes that there is reason-
19 able cause to believe that a violation of subsection (a) has
20 occurred, the Secretary shall accompany the Secretary's
21 findings with a preliminary order providing the relief pre-
22 scribed by paragraph (3)(B). Not later than 30 days after
23 the date of notification of findings under this paragraph,
24 either the person alleged to have committed the violation
25 or the complainant may file objections to the findings or

1 preliminary order, or both, and request a hearing on the
2 record. The filing of such objections shall not operate to
3 stay any reinstatement remedy contained in the prelimi-
4 nary order. Any such hearing shall be conducted expedi-
5 tiously. If a hearing is not requested in such 30-day pe-
6 riod, the preliminary order shall be deemed a final order
7 that is not subject to judicial review.

8 (B)(i) The Secretary shall dismiss a complaint filed
9 under this subsection and shall not conduct an investiga-
10 tion otherwise required under subparagraph (A) unless the
11 complainant makes a prima facie showing that any behav-
12 ior described in paragraphs (1) through (4) of subsection
13 (a) was a contributing factor in the unfavorable personnel
14 action alleged in the complaint.

15 (ii) Notwithstanding a finding by the Secretary
16 that the complainant has made the showing required
17 under clause (i), no investigation otherwise required
18 under subparagraph (A) shall be conducted if the
19 employer demonstrates, by clear and convincing evi-
20 dence, that the employer would have taken the same
21 unfavorable personnel action in the absence of that
22 behavior.

23 (iii) The Secretary may determine that a viola-
24 tion of subsection (a) has occurred only if the com-
25 plainant demonstrates that any behavior described in

1 paragraphs (1) through (4) of subsection (a) was a
2 contributing factor in the unfavorable personnel ac-
3 tion alleged in the complaint.
4 (iv) Relief may not be ordered under subpara-
5 graph (A) if the employer demonstrates by clear and
6 convincing evidence that the employer would have
7 taken the same unfavorable personnel action in the
8 absence of that behavior.
9 (3)(A) Not later than 120 days after the date
10 of conclusion of any hearing under paragraph (2),
11 the Secretary shall issue a final order providing the
12 relief prescribed by this paragraph or denying the
13 complaint. At any time before issuance of a final
14 order, a proceeding under this subsection may be
15 terminated on the basis of a settlement agreement
16 entered into by the Secretary, the complainant, and
17 the person alleged to have committed the violation.
18 (B) If, in response to a complaint filed under
19 paragraph (1), the Secretary determines that a vio-
20 lation of subsection (a) has occurred, the Secretary
21 shall order the person who committed such viola-
22 tion—
23 (i) to take affirmative action to abate the
24 violation;

1 (ii) to reinstate the complainant to his or
2 her former position together with compensation
3 (including back pay) and restore the terms,
4 conditions, and privileges associated with his or
5 her employment; and
6 (iii) to provide compensatory damages to
7 the complainant. If such an order is issued
8 under this paragraph, the Secretary, at the re-
9 quest of the complainant, shall assess against
10 the person against whom the order is issued a
11 sum equal to the aggregate amount of all costs
12 and expenses (including attorneys' and expert
13 witness fees) reasonably incurred, as deter-
14 mined by the Secretary, by the complainant for,
15 or in connection with, the bringing of the com-
16 plaint upon which the order was issued.
17 (C) If the Secretary finds that a complaint
18 under paragraph (1) is frivolous or has been brought
19 in bad faith, the Secretary may award to the pre-
20 vailing employer a reasonable attorneys' fee, not ex-
21 ceeding $ 1,000, to be paid by the complainant.
22 (4) If the Secretary has not issued a final decision
23 within 210 days after the filing of the complaint, or within
24 90 days after receiving a written determination, the com-
25 plainant may bring an action at law or equity for de novo

1 review in the appropriate district court of the United
2 States with jurisdiction, which shall have jurisdiction over
3 such an action without regard to the amount in con-
4 troversy, and which action shall, at the request of either
5 party to such action, be tried by the court with a jury.
6 The proceedings shall be governed by the same legal bur-
7 dens of proof specified in paragraph (2)(B). The court
8 shall have jurisdiction to grant all relief necessary to make
9 the employee whole, including injunctive relief and com-
10 pensatory damages, including—
11 (A) reinstatement with the same seniority sta-
12 tus that the employee would have had, but for the
13 discharge or discrimination;
14 (B) the amount of back pay, with interest; and
15 (C) compensation for any special damages sus-
16 tained as a result of the discharge or discrimination,
17 including litigation costs, expert witness fees, and
18 reasonable attorney's fees.
19 (5)(A) Unless the complainant brings an action under
20 paragraph (4), any person adversely affected or aggrieved
21 by a final order issued under paragraph (3) may obtain
22 review of the order in the United States Court of Appeals
23 for the circuit in which the violation, with respect to which
24 the order was issued, allegedly occurred or the circuit in
25 which the complainant resided on the date of such viola-

1 tion. The petition for review must be filed not later than
2 60 days after the date of the issuance of the final order
3 of the Secretary. Review shall conform to chapter 7 of title
4 5, United States Code. The commencement of proceedings
5 under this subparagraph shall not, unless ordered by the
6 court, operate as a stay of the order.

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

11 (6) Whenever any person has failed to comply
12 with an order issued under paragraph (3), the Sec-
13 retary may file a civil action in the United States
14 district court for the district in which the violation
15 was found to occur, or in the United States district
16 court for the District of Columbia, to enforce such
17 order. In actions brought under this paragraph, the
18 district courts shall have jurisdiction to grant all ap-
19 propriate relief including, but not limited to, injunc-
20 tive relief and compensatory damages.

21 (7)(A) A person on whose behalf an order was
22 issued under paragraph (3) may commence a civil
23 action against the person to whom such order was
24 issued to require compliance with such order. The
25 appropriate United States district court shall have

1 jurisdiction, without regard to the amount in con-
2 troversy or the citizenship of the parties, to enforce
3 such order.
4 (B) The court, in issuing any final order
5 under this paragraph, may award costs of liti-
6 gation (including reasonable attorneys' and ex-
7 pert witness fees) to any party whenever the
8 court determines such award is appropriate.
9 (c) Any nondiscretionary duty imposed by this section
10 shall be enforceable in a mandamus proceeding brought
11 under section 1361 of title 28, United States Code.
12 (d)(1) Except as provided under paragraph (3), the
13 rights and remedies provided for in this section may not
14 be waived by any agreement, policy, form, or condition of
15 employment, including by any predispute arbitration
16 agreement.
17 (2) Except as provided under paragraph (3), no
18 predispute arbitration agreement shall be valid or enforce-
19 able if it requires arbitration of a dispute arising under
20 this section.
21 (e) Notwithstanding paragraphs (1) and (2), an arbi-
22 tration provision in a collective bargaining agreement shall
23 be enforceable as to disputes arising under paragraph
24 (a)(2) of this section unless the Agency determines by rule

1 that such provision is inconsistent with the purposes of
2 this Act.
3 (f) Any employer receiving covered funds shall post
4 notice of the rights and remedies provided under this sec-
5 tion.

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):

6 **SEC. 4508. NO PRIVATE RIGHT OF ACTION.**
7 Nothing in this title shall be construed to create a
8 private right of action, but this section shall not be con-
9 strued or interpreted to deny any private right of action
10 arising under the enumerated consumer laws or the au-
11 thorities 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:

1 (8) SECTION 149.—Section 149(b) of the Truth
2 in Lending Act (15 U.S.C. 1665d(b)) is amended by
3 inserting "the Federal Trade Commission," after "in
4 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:

1 (5) SECTION 609.—Section 609(d)(1) of the
2 Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1))
3 is amended by inserting "the Federal Trade Com-
4 mission," 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:

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

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

1 (B) in the heading of paragraph (3) by in-
2 serting "CONSUMER REPORTING" before
3 "AGENCY".

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

4 (8) SECTION 615.—Section 615 of the Fair
5 Credit Reporting Act (15 U.S.C. 1681m) is amend-
6 ed—
7 (A) in subsection (d)(2)(B), by inserting
8 "the Federal Trade Commission," after "in
9 consultation with";
10 (B) in subsection (e)(1), by striking "and
11 the Commission" and inserting "the Federal
12 Trade Commission, the Securities and Ex-
13 change Commission, and the Commodities Fu-
14 tures Trading Commission"; and
15 (C) by striking subparagraph (A) of sub-
16 section (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):

1 (C) in paragraph (2) of subsection (c)—
2 (i) by inserting "the Agency and" be-
3 fore "the Federal Trade Commission" in
4 the first sentence;
5 (ii) by inserting "Agency and the Fed-
6 eral Trade" after "provide the"; and
7 (iii) by inserting "Agency," before
8 "Federal Trade Commission" in the sec-
9 ond sentence;
10 (D) in paragraph (4) of subsection (c)—
11 (i) by inserting "Agency", before "the
12 Federal Trade Commission"; and
13 (ii) inserting "Agency, the Federal
14 Trade" after "complaint of the";
15 (E) in paragraph (2) of subsection (f), by
16 inserting "the Federal Trade Commission"
17 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:

1 (iii) in paragraph (1)(B)—
2 (I) by inserting "of Governors of
3 the Federal Reserve System" after
4 "Board"; and
5 (II) by striking "and" after the
6 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:

7 (iii) in paragraph (l)(B), by inserting
8 "of Governors of the Federal Reserve Sys-
9 tem" 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):

1 (a) SECTION 501.—Section 501(b) of the Gramm-
2 Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by in-
3 serting "(other than the Consumer Financial Protection
4 Agency)" after "title".
5 (b) SECTION 502.—Section 502(e)(5) of the Gramm-
6 Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by
7 inserting "the Consumer Financial Protection Agency,"
8 after "(including".
9 (c) SECTION 503.—Section 503(e)(1) of the Gramm-
10 Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—
11 (1) by inserting "Consumer Financial Protec-
12 tion Agency in consultation with the other" before
13 "agencies"; and
14 (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:

15 (3) by inserting "the Federal banking agencies,
16 the National Credit Union Administration, the Sec-
17 retary of the Treasury, the Federal Trade Commis-

1 sion, and" before "representatives of State insurance
2 authorities".

Page 989, after line 15, insert the following:

3 (f) SECTION 507.—Subsection 507(b) of the Gramm-
4 Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by strik-
5 ing "Federal Trade Commission" and inserting "Con-
6 sumer Financial Protection Agency, or in the case of a
7 rule under section 501(b), the Federal Trade Commission
8 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:

9 **SEC. 4815. AMENDMENTS TO THE TELEMARKETING AND**
10 **CONSUMER FRAUD ABUSE AND PREVENTION**
11 **ACT.**
12 (a) Section 4 of the Telemarketing and Consumer
13 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
14 amended—
15 (1) in subsection (b)—
16 (A) by inserting "and the Consumer Fi-
17 nancial Protection Agency with respect to a
18 person subject to the authority of that Agency
19 under the Consumer Financial Protection Agen-

1 cy Act" after "Commission" each of the first 2
2 places it appears; and
3 (B) by inserting "or the Consumer Finan-
4 cial Protection Agency" after "Commission" the
5 last place it appears; and
6 (2) in subsection (d), by inserting "or the Con-
7 sumer Financial Protection Agency" after "Commis-
8 sion" each place such term appears.
9 (b) Section 5 of the Telemarketing and Consumer
10 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
11 amended—
12 (1) in subsection (b)—
13 (A) by inserting "and the Consumer Fi-
14 nancial Protection Agency with respect to a
15 person subject to the authority of that Agency
16 under the Consumer Financial Protection Agen-
17 cy Act" after "Commission" each of the first 2
18 places it appears; and
19 (B) by inserting "or the Consumer Finan-
20 cial Protection Agency" after "Commission" the
21 last place it appears; and
22 (2) in subsection (c), by inserting "or the Con-
23 sumer Financial Protection Agency" after "Commis-
24 sion" each place such term appears.

1 (c) Section 6 of the Telemarketing and Consumer
2 Fraud Abuse and Prevention Act (15 U.S.C. 6102) is
3 amended by redesignating subsection (c) as subsection (d)
4 and inserting after subsection (b) the following:
5 "(c) ENFORCEMENT BY THE CONSUMER FINANCIAL
6 PROTECTION AGENCY.—Subject to section 4202 of the
7 Consumer Financial Protection Agency Act of 2009, this
8 Act shall be enforced by the Consumer Financial Protec-
9 tion Agency, under subtitle E of that Act, with respect
10 to a person subject to the authority of that Agency under
11 that Act. For the purpose of the exercise by the Consumer
12 Financial Protection Agency of its powers under subtitle
13 E, a violation of any requirement imposed under this Act
14 shall be deemed to be a violation of a requirement imposed
15 under the Consumer Financial Protection Agency Act. In
16 addition to its powers under subtitle E of that Act, the
17 Agency may exercise, for the purpose of enforcing compli-
18 ance with any requirement imposed under this Act, any
19 other authority conferred on it by law.".

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

20 (2) by inserting a comma after "under this
21 Act";
22 (3) by inserting a comma after "subsection
23 (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:

1 **Subtitle J—Miscellaneous**

2 **SEC. 4951. REQUIREMENTS FOR STATE-LICENSED LOAN**
3 **ORIGINATORS.**

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

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

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

15 "(i) in total, fewer than 15 clients and
16 investors in the United States in private

1 funds advised by the investment adviser;
2 and".

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

3 "(ii) aggregate assets under manage-
4 ment attributable to clients and investors
5 in the United States in private funds ad-
6 vised by the investment adviser of".

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

7 (a) EXEMPTION.—Section

Page 1024, after line 3, insert the following:

8 (b) CONSIDERATION OF RISK.—Section 203(c) of the
9 Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c))
10 is amended by adding at the end the following:
11 "(3) The Commission shall take into account
12 the relative risk profile of different classes of private
13 funds as it establishes, by rule or regulation, the
14 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:

1 "(8) NON-DISCLOSURE OF CERTAIN PROPRI-
2 ETARY INFORMATION AND CONFIDENTIALITY OF RE-
3 PORTS.—Any proprietary information of an invest-
4 ment adviser ascertained by the Commission from
5 any report required to be filed with the Commission
6 pursuant to this section 204(b) shall be subject to
7 the same limitations on public disclosure as any
8 facts ascertained during an examination as provided
9 by section 210(b) of this title. The Commission may
10 not compel the private fund to disclose such propri-
11 etary information to counterparties and creditors.
12 For purposes of this section, proprietary information
13 shall include sensitive, non-public information re-
14 garding the investment adviser's investment or trad-

1 ing strategies, analytical or research methodologies,
2 trading data, computer hardware or software con-
3 taining intellectual property, and any additional in-
4 formation that the Commission determines to be
5 proprietary. Notwithstanding any other provision of
6 law, the Commission shall not be compelled to dis-
7 close any report or information contained therein re-
8 quired to be filed with the Commission under this
9 subsection. Nothing in this paragraph shall author-
10 ize the Commission to withhold information from the
11 Congress or to prevent the Commission from com-
12 plying with a request for information from any other
13 Federal department or agency or any self-regulatory
14 organization requesting the report or information for
15 purposes within the scope of its jurisdiction, or com-
16 plying with an order of a court of the United States
17 in an action brought by the United States or the
18 Commission. For purposes of section 552 of title 5,
19 United States Code, this paragraph shall be consid-
20 ered a statute described in subsection (b)(3)(B) of
21 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:

1 (2) SYMBOLS.— The Commission may prescribe
2 rules that require nationally recognized statistical
3 rating organizations to establish credit rating sym-
4 bols that distinguish credit ratings for structured
5 products from credit ratings for other products that
6 the Commission determines appropriate or necessary
7 in the public interest and for the protection of inves-
8 tors, provided such rules do not prevent public pen-
9 sion funds or other State regulated entities from in-
10 vesting 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:

1 (C) to any whistleblower who gains the in-
2 formation through the performance of an audit

1 of financial statements required under the secu-
2 rities 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:

3 "(2) CONFIDENTIALITY.—
4 "(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the Commission and any of-
6 ficer or employee of the Commission shall not
7 disclose any information, including information
8 provided by a whistleblower to the Commission,
9 which could reasonably be expected to reveal
10 the identity of a whistleblower, except in ac-
11 cordance with the provisions of section 552a of
12 title 5, United States Code, unless and until re-
13 quired to be disclosed to a defendant or re-
14 spondent in connection with a public proceeding
15 instituted by the Commission or any entity de-
16 scribed in subparagraph (B). For purposes of
17 section 552 of title 5, United States Code, this
18 paragraph shall be considered a statute de-
19 scribed in subsection (b)(3)(B) of such section
20 552.

1 "(B) AVAILABILITY TO GOVERNMENT
2 AGENCIES.—Without the loss of its status as
3 confidential and privileged in the hands of the
4 Commission, all information referred to in sub-
5 paragraph (A) may, in the discretion of the
6 Commission, when determined by the Commis-
7 sion to be necessary to accomplish the purposes
8 of this Act and protect investors, be made avail-
9 able to—
10 "(i) the Attorney General of the
11 United States,
12 "(ii) an appropriate regulatory au-
13 thority,
14 "(iii) a self-regulatory organization,
15 "(iv) State attorneys general in con-
16 nection with any criminal investigation,
17 and
18 "(v) any appropriate State regulatory
19 authority,
20 "each of which shall not disclose such informa-
21 tion 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:

1 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
2 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
3 inserting after the second sentence the following: "In any
4 civil action instituted by the Commission under this title
5 in a United States district court for any judicial district,
6 subpoenas issued to compel the attendance of witnesses
7 or the production of documents or tangible things (or
8 both) at any hearing or trial may be served at any place
9 within the United States. Rule 45(c)(3)(A)(ii) of the Fed-
10 eral Rules of Civil Procedure does not apply to a subpoena
11 so issued.".
12 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
13 27 of the Securities Exchange Act of 1934 (15 U.S.C.
14 78aa) is amended by inserting after the third sentence the
15 following: "In any civil action instituted by the Commis-

1 sion under this title in a United States district court for
2 any judicial district, subpoenas issued to compel the at-
3 tendance of witnesses or the production of documents or
4 tangible things (or both) at any hearing or trial may be
5 served at any place within the United States. Rule
6 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
7 does not apply to a subpoena so issued.".

8 (c) INVESTMENT COMPANY ACT OF 1940.—Section
9 44 of the Investment Company Act of 1940 (15 U.S.C.
10 80a–43) is amended by inserting after the fourth sentence
11 the following: "In any civil action instituted by the Com-
12 mission under this title in a United States district court
13 for any judicial district, subpoenas issued to compel the
14 attendance of witnesses or the production of documents
15 or tangible things (or both) at any hearing or trial may
16 be served at any place within the United States. Rule
17 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
18 does not apply to a subpoena so issued.".

19 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
20 214 of the Investment Advisers Act of 1940 (15 U.S.C.
21 80b–14) is amended by inserting after the third sentence
22 the following: "In any civil action instituted by the Com-
23 mission under this title in a United States district court
24 for any judicial district, subpoenas issued to compel the
25 attendance of witnesses or the production of documents

1 or tangible things (or both) at any hearing or trial may
2 be served at any place within the United States. Rule
3 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
4 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:

1 (a) IN GENERAL.—Not later than 180 days after the
2 date of the enactment of this title, the Securities and Ex-

1 change Commission shall adopt a rule pursuant to its au-
2 thority under section 211(a) of the Investment Advisers
3 Act of 1940 making it unlawful under section 206(4) of
4 that Act for an investment adviser registered under such
5 Act to have custody of funds or securities of a client the
6 value of which exceeds $10,000,000, unless—

7 (1) the funds and securities are maintained
8 with a qualified custodian either in a separate ac-
9 count for each client under the client's name, or in
10 accounts that contain only client funds and securi-
11 ties under the name of the investment adviser as
12 agent or trustee for the client; and

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

16 (b) EXCEPTIONS.—The rule adopted under sub-
17 section (a) shall include such exceptions as the Commis-
18 sion determines in the public interest and consistent with
19 the protection of investors. Any exemption granted under
20 this subsection shall ensure that at least once per year,
21 a client described in subsection (a) shall receive a report
22 from an independent entity with a fiduciary responsibility
23 to the client to verify that the assets in the client's account
24 are in accord with those stated on the client's account
25 statement.

1 (c) NO LIMITS ON OTHER ACTIONS.—Nothing in this
2 section shall be construed to limit other actions the Securi-
3 ties and Exchange Commission may take under this Act
4 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:

5 **SEC. 7421. NOTICE TO MISSING SECURITY HOLDERS.**

6 Section 17A of the Securities Exchange Act of 1934
7 (15 U.S.C. 78q-1) is amended by adding at the end the
8 following new subsection:

9 "(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
10 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
11 RIGHTS.—

12 "(1) REVISION OF RULES REQUIRED.—The
13 Commission shall revise its regulations in section
14 240.17Ad-17 of title 17, Code of Federal Regula-
15 tions, as in effect on December 8, 1997, to extend
16 the application of such section to brokers and deal-
17 ers and to provide for the following:

1 "(A) A requirement that the paying agent
2 provide a single written notification to each
3 missing security holder that the missing secu-
4 rity holder has been sent a check that has not
5 yet been negotiated. The written notification
6 may be sent along with a check or other mailing
7 subsequently sent to the missing security holder
8 but must be provided no later than 7 months
9 after the sending of the not yet negotiated
10 check.
11 "(B) An exclusion for paying agents from
12 the notification requirements when the value of
13 the not yet negotiated check is less than $25.
14 "(C) A provision clarifying that the re-
15 quirements described in subparagraph (A) shall
16 have no effect on State escheatment laws.
17 "(D) For purposes of such revised regula-
18 tions—
19 "(i) a security holder shall be consid-
20 ered a 'missing security holder' if a check
21 is sent to the security holder and the check
22 is not negotiated before the earlier of the
23 paying agent sending the next regularly
24 scheduled check or the elapsing of 6

1 months after the sending of the not yet ne-
2 gotiated check; and
3 "(ii) the term 'paying agent' includes
4 any issuer, transfer agent, broker, dealer,
5 investment adviser, indenture trustee, cus-
6 todian, or any other person that accepts
7 payments from the issuer of a security and
8 distributes the payments to the holders of
9 the security.
10 "(2) RULEMAKING.—The Commission shall
11 adopt such rules, regulations, and orders necessary
12 to implement this subsection no later than 1 year
13 after the date of enactment of this subsection. In
14 proposing such rules, the Commission shall seek to
15 minimize disruptions to current systems used by or
16 on behalf of paying agents to process payment to ac-
17 count holders and avoid requiring multiple paying
18 agents to send written notification to a missing secu-
19 rity holder regarding the same not yet negotiated
20 check.".
21 **SEC. 7422. SHORT SALE REFORMS.**
22 (a) SHORT SALE DISCLOSURE.—Section 13(f) of the
23 Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is
24 amended by redesignating paragraphs (2), (3), (4), and

1 (5) as paragraphs (3), (4), (5), and (6), respectively, and
2 inserting after paragraph (1) the following:
3 "(2)(A) Every institutional investment manager
4 that effects a short sale of an equity security shall
5 also file a report on a daily basis with the Commis-
6 sion in such form as the Commission, by rule, may
7 prescribe. Such report shall include, as applicable,
8 the name of the institution, the name of the institu-
9 tional investment manager and the title, class,
10 CUSIP number, number of shares or principal
11 amount, aggregate fair market value of each secu-
12 rity, and any additional information requested by
13 the Commission. For purposes of section 552 of title
14 5, United States Code, this subparagraph shall be
15 considered a statute described in subsection
16 (b)(3)(B) of such section. The information contained
17 in reports of an institutional investment manager
18 filed with the Commission pursuant to this section,
19 shall be subject to the same non-disclosure and con-
20 fidentiality protection provided under section
21 204(b)(8) of the Investment Advisers Act of 1940.
22 "(B) The Commission shall prescribe rules pro-
23 viding for the public disclosure of the name of the
24 issuer and the title, class, CUSIP number, aggregate
25 amount of the number of short sales of each secu-

1 rity, and any additional information determined by
2 the Commission following the end of the reporting
3 period. At a minimum, such public disclosure shall
4 occur every month.".
5 (b) SHORT SELLING ENFORCEMENT.—Section 9 of
6 the Securities Exchange Act of 1934 (15 U.S.C. 78i) is
7 amended—
8 (1) by redesignating subsections (d), (e), (f),
9 (g), (h), and (i) as subsections (e), (f), (g), (h), (i),
10 and (j), respectively; and
11 (2) inserting after subsection (c), the following
12 new subsection:
13 "(d) TRANSACTIONS RELATING TO SHORT SALES OF
14 SECURITIES.—It shall be unlawful for any person, directly
15 or indirectly, by the use of the mails or any means or in-
16 strumentality of interstate commerce, or of any facility of
17 any national securities exchange, or for any member of
18 a national securities exchange to effect, alone or with one
19 or more other persons, a manipulative short sale of any
20 security. The Commission shall issue such other rules as
21 are necessary or appropriate to ensure that the appro-
22 priate enforcement options and remedies are available for
23 violations of this subsection in the public interest or for
24 the protection of investors.".

1 (c) INVESTOR NOTIFICATION.—Section 15 of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78o) is amend-
3 ed—
4 (1) by redesignating subsections (e), (f), (g),
5 (h), and (i) as subsections (f), (g), (h), (i), and (j),
6 respectively; and
7 (2) inserting after subsection (d) the following
8 new subsection:
9 "(e) NOTICES TO CUSTOMERS REGARDING SECURI-
10 TIES LENDING.—Every registered broker or dealer shall
11 provide notice to its customers that they may elect not
12 to allow their fully paid securities to be used in connection
13 with short sales. If a broker or dealer uses a customer's
14 securities in connection with short sales, the broker or
15 dealer shall provide notice to its customer that the broker
16 or dealer may receive compensation in connection with
17 lending the customer's securities. The Commission, by
18 rule, as it deems necessary or appropriate in the public
19 interest and for the protection of investors, may prescribe
20 the form, content, time, and manner of delivery of any
21 notice required under this paragraph.".
22 **SEC. 7423. STREAMLINING OF SEC FILING PROCEDURES.**
23 (a) APPROVAL PROCESS.—Section 19(b)(2) of the
24 Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(2))
25 is amended to read as follows:

1 "(2) FILING PROCEDURES.—

2 "(A) IN GENERAL.—Within thirty-five
3 days of the date of publication of notice of the
4 filing of a proposed rule change in accordance
5 with paragraph (1) of this subsection, or within
6 such longer period as the Commission may des-
7 ignate up to ninety days of such date if it finds
8 such longer period to be appropriate and pub-
9 lishes its reasons for so finding or as to which
10 the self-regulatory organization consents, the
11 Commission shall—

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

14 "(ii) institute proceedings under sub-
15 paragraph (B) to determine whether the
16 proposed rule change should be dis-
17 approved.

18 "(B) PROCEEDINGS.—Proceedings to de-
19 termine whether the proposed rule change
20 should be disapproved shall include notice of
21 the grounds for disapproval under consideration
22 and opportunity for hearing and be concluded
23 within 200 days from the date of receipt of a
24 proper filing. At the conclusion of such pro-
25 ceedings the Commission, by order, shall ap-

1 prove or disapprove such proposed rule change.
2 The Commission may extend the time for con-
3 clusion of such proceedings for up to 60 days
4 if it finds good cause for such extension and
5 publishes its reasons for so finding or for such
6 longer period as to which the self-regulatory or-
7 ganization consents. The Commission shall ap-
8 prove a proposed rule change of a self-regu-
9 latory organization if it finds that such pro-
10 posed rule change is consistent with the re-
11 quirements of this title and the rules and regu-
12 lations thereunder applicable to such organiza-
13 tion. The Commission shall disapprove a pro-
14 posed rule change of a self-regulatory organiza-
15 tion if it does not make such finding. The Com-
16 mission shall not approve any proposed rule
17 change prior to the thirtieth day after the date
18 of publication of notice of the filing thereof, un-
19 less the Commission finds good cause for so
20 doing and publishes its reasons for so finding.''.
21 (b) RULES.—Not later than 12 months after the date
22 of enactment of this Act, the Commission shall issue rules
23 implementing a disapproval process for filings submitted
24 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:

1 (e) INSPECTIONS BY REGISTERED ACCOUNTING
2 FIRMS.—Subsection (a) of Section 104 of such Act is
3 amended—
4 (1) by striking "(a) IN GENERAL.—The Board
5 shall" and inserting the following:
6 "(a) IN GENERAL.—
7 "(1) The Board shall"; and
8 (2) by adding at the end of such subsection the
9 following:
10 "(2) INSPECTIONS OF AUDIT REPORT FOR BRO-
11 KERS AND DEALERS.—
12 "(A) The Board may, by rule, conduct and
13 require a program of inspection in accordance
14 with paragraph (a)(1), on a basis to be deter-
15 mined by the Board, of registered public ac-
16 counting firms that provide one or more audit
17 reports for a broker or dealer. The Board, in

1 establishing such a program, may allow for dif-
2 ferentiation among classes of brokers and deal-
3 ers, as appropriate.
4 "(B) If the Board determines to establish
5 a program of inspection pursuant to subpara-
6 graph (A), the Board shall consider in estab-
7 lishing any inspection schedules whether dif-
8 fering schedules would be appropriate with re-
9 spect to registered public accounting firms that
10 issue audit reports only for one or more brokers
11 or dealers that do not receive, handle, or hold
12 customer securities or cash or are not a mem-
13 ber of the Securities Investor Protection Cor-
14 poration.
15 "(C) Any rules of the Board pursuant to
16 this paragraph shall be subject to prior ap-
17 proval by the Commission pursuant to section
18 107(b) before the rules become effective, includ-
19 ing an opportunity for public notice and com-
20 ment.
21 "(D) Notwithstanding anything to the con-
22 trary in section 102 of this Act, a public ac-
23 counting firm shall not be required to register
24 with the Board if the public accounting firm is
25 exempt from the inspection program which may

1 be established by the Board under subpara-
2 graph (a)(2)(A) of this section.
3 "(3) CONFORMING AMENDMENT.—Section 17
4 (e)(1)(A) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78q(e) (1) (A)) is amended by striking
6 'registered public accounting firm' and inserting
7 'independent public accounting firm or by a reg-
8 istered public accounting firm if registration is re-
9 quired under the Sarbanes-Oxley Act of 2002 as
10 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:

1 (4) APPLICATION OF FIDUCIARY DUTY FOR
2 PERSONALIZED INVESTMENT ADVICE ABOUT SECURI-
3 TIES.—Nothing in this section shall diminish in any
4 manner nor supersede the standard of conduct appli-
5 cable to all brokers, dealers and investment advisers
6 providing personalized investment advice about secu-
7 rities 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:

8 (6) SUITABILITY AND SUPERVISION RULES FOR
9 ANNUITY PRODUCTS.—A State shall have adopted
10 rules that govern suitability requirements in the sale
11 of annuities which shall meet or exceed the min-
12 imum requirements established by the National As-
13 sociation of Insurance Commissioners Suitability in
14 Annuity Transactions Model Regulation in effect on
15 the date of the enactment of this Act, or any suc-
16 cessor 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:

1 (v) the independent accountant that
2 audits the financial statements of the mu-
3 nicipal securities issuer.

Page 1259, after line 24, insert the following new subparagraph and redesignate subsequent subparagraphs accordingly):

1 "(C) To monitor the extent to which tradi-
2 tionally underserved communities and con-
3 sumers, minorities (as such term is defined in
4 24 section 1204(c) of the Financial Institutions
5 Reform, Recovery, and Enforcement Act of
6 1989 (12 U.S.C. 1811 note)), and low- and
7 moderate-income persons have access to afford-
8 able insurance products regarding all lines of
9 insurance, except health insurance.".

Page 1261, after line 6, insert the following new paragraph:

10 "(3) ADVISORY CAPACITY ON COUNCIL.—The
11 Director shall serve in an advisory capacity on the
12 Financial Services Oversight Council established
13 under the Financial Stability Improvement Act of
14 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:

1 "(A) permitting any yield spread premium
2 or other similar compensation that would, for
3 any mortgage loan, permit the total amount of
4 direct and indirect compensation from all
5 sources permitted to a mortgage originator to
6 vary based on the terms of the loan (other than
7 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:

1 **TITLE VIII—FORECLOSURE**
2 **AVOIDANCE AND AFFORD-**
3 **ABLE HOUSING**

4 **SEC. 10001. EMERGENCY MORTGAGE RELIEF.**

5 (a) USE OF TARP FUNDS.—Using the authority
6 available under sections 101(a) and 115(a) of division A
7 of the Emergency Economic Stabilization Act of 2008 (12
8 U.S.C. 5211(a), 5225(a)), the Secretary of the Treasury
9 shall transfer to the Secretary of Housing and Urban De-
10 velopment $3,000,000,000, and the Secretary of Housing
11 and Urban Development shall credit such amount to the
12 Emergency Homeowners' Relief Fund, which such Sec-
13 retary shall establish pursuant to section 107 of the Emer-

1 gency Housing Act of 1975 (12 U.S.C. 2706), as such
2 Act is amended by this section, for use for emergency
3 mortgage assistance in accordance with title I of such Act.
4 (b) REAUTHORIZATION OF EMERGENCY MORTGAGE
5 RELIEF PROGRAM.—Title I of the Emergency Housing
6 Act of 1975 is amended—
7 (1) in section 103 (12 U.S.C. 2702)—
8 (A) in paragraph (2)—
9 (i) by striking "have indicated" and
10 all that follows through "regulation of the
11 holder" and insert "have certified";
12 (ii) by striking "(such as the volume
13 of delinquent loans in its portfolio)"; and
14 (iii) by striking ", except that such
15 statement" and all that follows through
16 "purposes of this title"; and
17 (B) in paragraph (4), by inserting "or
18 medical conditions" after "adverse economic
19 conditions";
20 (2) in section 104 (12 U.S.C. 2703)—
21 (A) in subsection (b), by striking ", but
22 such assistance" and all that follows through
23 the period at the end and inserting the fol-
24 lowing: ". The amount of assistance provided to
25 a homeowner under this title shall be an

1 amount that the Secretary determines is rea-
2 sonably necessary to supplement such amount
3 as the homeowner is capable of contributing to-
4 ward such mortgage payment, except that the
5 aggregate amount of such assistance provided
6 for any homeowner shall not exceed $50,000."
7 ;
8 (B) in subsection (d), by striking "interest
9 on a loan or advance"and all that follows
10 through the end of the subsection and inserting
11 the following: "(1) the rate of interest on any
12 loan or advance of credit insured under this
13 title shall be fixed for the life of the loan or ad-
14 vance of credit and shall not exceed the rate of
15 interest that is generally charged for mortgages
16 on single-family housing insured by the Sec-
17 retary of Housing and Urban Development
18 under title II of the National Housing Act at
19 the time such loan or advance of credit is made,
20 and (2) no interest shall be charged on interest
21 which is deferred on a loan or advance of credit
22 made under this title. In establishing rates,
23 terms and conditions for loans or advances of
24 credit made under this title, the Secretary shall

1 take into account a homeowner's ability to
2 repay such loan or advance of credit."; and
3 (C) in subsection (e), by inserting after the
4 period at the end of the first sentence the fol-
5 lowing: "Any eligible homeowner who receives a
6 grant or an advance of credit under this title
7 may repay the loan in full, without penalty, by
8 lump sum or by installment payments at any
9 time before the loan becomes due and pay-
10 able.";
11 (3) in section 105 (12 U.S.C. 2704)—
12 (A) by striking subsection (b);
13 (B) in subsection (e)—
14 (i) by inserting "and emergency mort-
15 gage relief payments made under section
16 106" after "insured under this section";
17 and
18 (ii) by striking "$1,500,000,000 at
19 any one time" and inserting
20 "$3,000,000,000";
21 (C) by redesignating subsections (c), (d),
22 and (e) as subsections (b), (c), and (d), respec-
23 tively; and
24 (D) by adding at the end the following new
25 subsection:

1 "(e) The Secretary shall establish underwriting
2 guidelines or procedures to allocate amounts made avail-
3 able for loans and advances insured under this section and
4 for emergency relief payments made under section 106
5 based on the likelihood that a mortgagor will be able to
6 resume mortgage payments, pursuant to the requirement
7 under section 103(5).";
8 (4) in section 107—
9 (A) by striking "(a)"; and
10 (B) by striking subsection (b);
11 (5) in section 108 (12 U.S.C. 2707), by adding
12 at the end the following new subsection:
13 "(d) COVERAGE OF EXISTING PROGRAMS.—The Sec-
14 retary shall allow funds to be administered by a State that
15 has an existing program that is determined by the Sec-
16 retary to provide substantially similar assistance to home-
17 owners. After such determination is made such State shall
18 not be required to modify such program to comply with
19 the provisions of this title.";
20 (6) in section 109 (12 U.S.C. 2708)—
21 (A) in the section heading, by striking
22 "AUTHORIZATION AND";
23 (B) by striking subsection (a);
24 (C) by striking "(b)"; and

1 (D) by striking "1977" and inserting
2 "2011";
3 (7) by striking sections 110, 111, and 113 (12
4 U.S.C. 2709, 2710, 2712); and
5 (8) by redesignating section 112 (12 U.S.C.
6 2711) as section 110.

7 **SEC. 10002. ADDITIONAL ASSISTANCE FOR NEIGHBORHOOD**
8 **STABILIZATION PROGRAM.**

9 Using the authority made available under sections
10 101(a) and 115(a) of division A of the Emergency Eco-
11 nomic Stabilization Act of 2008 (12 U.S.C. 5211(a),
12 5225(a)), the Secretary of the Treasury shall transfer to
13 the Secretary of Housing and Urban Development
14 $1,000,000,000, and the Secretary of Housing and Urban
15 Development shall use such amounts for assistance to
16 States and units of general local government for the rede-
17 velopment of abandoned and foreclosed homes, in accord-
18 ance with the same provisions applicable under the second
19 undesignated paragraph under the heading "Community
20 Planning and Development--Community Development
21 Fund" in title XII of division A of the American Recovery
22 and Reinvestment Act of 2009 (Public Law 111–5; 123
23 Stat. 217) to amounts made available under such second
24 undesignated paragraph, except as follows:

1 (1) Notwithstanding the matter of such second
2 undesignated paragraph that precedes the first pro-
3 viso, amounts made available by this section shall re-
4 main available until expended.
5 (2) The 3rd, 4th, 5th, 6th, 7th, and 15th pro-
6 visos of such second undesignated paragraph shall
7 not apply to amounts made available by this section.
8 (3) Amounts made available by this section
9 shall be allocated based on a funding formula for
10 such amounts established by the Secretary in ac-
11 cordance with section 2301(b) of the Housing and
12 Economic Recovery Act of 2008 (42 U.S.C. 5301
13 note), except that—
14 (A) notwithstanding paragraph (2) of such
15 section 2301(b), the formula shall be estab-
16 lished not later than 30 days after the date of
17 the enactment of this Act;
18 (B) the Secretary may not establish any
19 minimum grant amount or size for grants to
20 States;
21 (C) the Secretary may establish a min-
22 imum grant amount for direct allocations to
23 units of general local government located within
24 a State, which shall not exceed $1,000,000; and

1 (D) each State and local government re-
2 ceiving grant amounts shall establish proce-
3 dures to create preferences for the development
4 of affordable rental housing for properties as-
5 sisted with amounts made available by this sec-
6 tion.
7 (4) Paragraph (1) of section 2301(c) of the
8 Housing and Economic Recovery Act of 2008 shall
9 not apply to amounts made available by this section.
10 (5) Section 2302 of the Housing and Economic
11 Recovery Act of 2008 shall not apply to amounts
12 made available by this section.
13 (6) The fourth proviso from the end of such
14 second undesignated paragraph shall be applied to
15 amounts made available by this section by sub-
16 stituting "2013" for "2012".
17 (7) Notwithstanding section 2301(a) of the
18 Housing and Economic Recovery Act of 2008, the
19 term "State" means any State of the United States,
20 the District of Columbia, the Commonwealth of
21 Puerto Rico, the Commonwealth of the Northern
22 Mariana Islands, Guam, the Virgin Islands, Amer-
23 ican Samoa, and other territory or possession of the
24 United States for purposes of this section and title

1 III of division B of such Act, as applied to amounts
2 made available by this section.
3 (8)(A) None of the amounts made available by
4 this section shall be distributed to—
5 (i) any organization which has been con-
6 victed for a violation under Federal law relating
7 to an election for Federal office; or
8 (ii) any organization which employs appli-
9 cable individuals.
10 (B) In this paragraph, the term "applicable in-
11 dividual" means an individual who—
12 (i) is—
13 (I) employed by the organization in a
14 permanent or temporary capacity;
15 (II) contracted or retained by the or-
16 ganization; or
17 (III) acting on behalf of, or with the
18 express or apparent authority of, the orga-
19 nization; and
20 (ii) has been convicted for a violation
21 under Federal law relating to an election for
22 Federal office.

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

Page 826, after line 20, insert the following new subsection:

1 (c) ADDITIONAL CONSUMER PROTECTION REGULA-
2 TIONS IN RESPONSE TO STATE ACTION.—
3 (1) NOTICE OF PROPOSED RULE REQUIRED.—
4 The Agency shall issue a notice of proposed rule-
5 making whenever a majority of the States has en-
6 acted a resolution in support of the establishment or
7 modification of a consumer protection regulation by
8 the Agency.
9 (2) AGENCY CONSIDERATIONS REQUIRED FOR
10 ISSUANCE OF FINAL REGULATION.—Before pre-
11 scribing a final regulation based upon a notice
12 issued pursuant to paragraph (1), the Agency shall
13 take into account whether—
14 (A) the proposed regulation would afford
15 greater protection to consumers than any exist-
16 ing regulation;
17 (B) the intended benefits of the proposed
18 regulation for consumers would outweigh any
19 increased costs or inconveniences for con-
20 sumers, and would not discriminate unfairly
21 against any category or class of consumers; and
22 (C) a Federal banking agency has advised
23 that the proposed regulation is likely to present

1 an unacceptable safety and soundness risk to
2 insured depository institutions.
3 (3) EXPLANATION OF CONSIDERATIONS.—The
4 Agency—
5 (A) shall include a discussion of the con-
6 siderations required in subsection (b) in the
7 Federal Register notice of a final regulation
8 prescribed pursuant to this section; and
9 (B) whenever the Agency determines not to
10 prescribe a final regulation, shall publish an ex-
11 planation of such determination in the Federal
12 Register, and provide a copy of such expla-
13 nation to each State that enacted a resolution
14 in support of the proposed regulation, the Com-
15 mittee on Financial Services of the House of
16 Representatives, and the Committee on Bank-
17 ing, Housing, and Urban Affairs of the Senate.
18 (4) RESERVATION OF AUTHORITY.—No provi-
19 sion of this section shall be construed as limiting or
20 restricting the authority of the Agency to enhance
21 consumer protection standards established pursuant
22 to this title in response to its own motion or in re-
23 sponse to a request by any other interested person.
24 (5) RULE OF CONSTRUCTION.—No provision of
25 this section shall be construed as exempt the Agency

1 from complying with subchapter II of chapter 5 of
2 title 5, United States Code.
3 (6) DEFINITION.—For purposes of this section,
4 the term "consumer protection regulation" means a
5 regulation that the Agency is authorized to prescribe
6 under this title, the enumerated consumer laws, or
7 any law or authority transferred under subtitle F or
8 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:

1 "(B) the State consumer financial law pre-
2 vents, significantly interferes with, or materially
3 impairs the ability of an institution chartered as
4 a national bank to engage in the business of
5 banking. Any preemption determination under
6 this subparagraph may be made by a court or
7 by regulation or order of the Comptroller of the
8 Currency in accordance with applicable law, on
9 a case-by-case basis. Any such determination by
10 a court shall comply with the standards set
11 forth in subsection (d) of this section, with the
12 court making the subsection (d) finding de
13 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:

14 "(2) SAVINGS CLAUSE.—This Act does not pre-
15 empt or alter the applicability of any State law to
16 any subsidiary or affiliate of a national bank (other
17 than an institution chartered as a national bank)
18 that is not a depository institution.

Page 833, strike lines 3 through 17 and insert the following:

1 "(3) CASE-BY-CASE DETERMINATION.—

2 "(A) DEFINITION.—The term 'case-by-case
3 determination pursuant to this section' means a
4 determination made by the Comptroller con-
5 cerning the impact of a particular State con-
6 sumer financial law on any national bank that
7 is subject to that law, or the law of any other
8 State with substantively equivalent terms.

9 "(B) CONSULTATION.—When making
10 case-by-case determination pursuant to this sec-
11 tion that a State consumer financial law of an-
12 other State has a substantively equivalent terms
13 as one that the Comptroller is preempting, the
14 Comptroller shall first consult with the Con-
15 sumer Financial Protection Agency and shall
16 take such Agency's views into account when
17 making the determination.

18 "(4) RULE OF CONSTRUCTION.—This Act does
19 not occupy the field in any area of State law.

20 "(5) STANDARDS OF REVIEW.—

21 "(A) PREEMPTION.—A court reviewing
22 any determinations made by the Comptroller re-
23 garding preemption of a State law by this Act

1 shall assess the validity of such determinations
2 depending upon the thoroughness evident in the
3 agency's consideration, the validity of the agen-
4 cy's reasoning, the consistency with other valid
5 determinations made by the agency, and other
6 factors which the court finds persuasive and rel-
7 evant to its decision.
8 "(B) SAVINGS CLAUSE.—Except as pro-
9 vided in subparagraph (A), nothing in this sec-
10 tion shall affect the deference that a court may
11 afford to the Comptroller in making determina-
12 tions regarding the meaning or interpretation of
13 title LXII of the Revised Statutes of the United
14 States or other Federal laws.
15 "(6) COMPTROLLER DETERMINATION NOT DEL-
16 EGABLE.—Any regulation, order or determination
17 made by the Comptroller of the Currency under sub-
18 section (b)(1)(B) shall be made by the Comptroller
19 and shall not be delegable to another officer or em-
20 ployee 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:

1 "(g) PRESERVATION OF POWERS RELATED TO
2 CHARGING INTEREST.—No provision of this title shall be
3 construed as altering or otherwise affecting the authority
4 conferred by section 5197 of the Revised Statutes of the
5 United States (12 U.S.C. 85) for the charging of interest
6 by a national bank at the rate allowed by the laws of the
7 State, territory or district where the bank is located, in-
8 cluding with respect to the meaning of 'interest' under
9 such provision.
10 "(h) TRANSPARENCY OF OCC PREEMPTION DETER-
11 MINATIONS.—The Comptroller of the Currency shall pub-
12 lish and update no less frequently than quarterly, a list
13 of preemption determinations by the Comptroller of the
14 Currency then in effect that identifies the activities and
15 practices covered by each determination and the require-
16 ments 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:

1 "(B) the State consumer financial law pre-
2 vents, significantly interferes with, or materially
3 impairs the ability of an institution chartered as
4 a Federal savings association to engage in the
5 business of banking. Any preemption deter-
6 mination under this subparagraph may be made
7 by a court or by regulation or order of the Di-

1 rector of the Office of Thrift Supervision in ac-
2 cordance with applicable law, on a case-by-case
3 basis. Any such determination by a court shall
4 comply with the standards set forth in sub-
5 section (d) of this section, with the court mak-
6 ing 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:

7 "(2) SAVINGS CLAUSE.—This Act does not pre-
8 empt or alter the applicability of any State law to
9 any subsidiary or affiliate of a Federal savings asso-
10 ciation (other than an institution chartered as a
11 Federal savings association) that is not a depository
12 institution.

Page 839, strike line 15 and all that follows through page 840, line 4 and insert the following:

13 "(3) CASE-BY-CASE DETERMINATION.—
14 "(A) DEFINITION.—The term 'case-by-case
15 determination pursuant to this section' means a
16 determination made by the Director concerning
17 the impact of a particular State consumer fi-
18 nancial law on any Federal savings association

1 that is subject to that law, or the law of any
2 other State with substantively equivalent terms.
3 "(B) CONSULTATION.—When making
4 case-by-case determination pursuant to this sec-
5 tion that a State consumer financial law of an-
6 other State has a substantively equivalent terms
7 as one that the Director of the Office of Thrift
8 Supervision is preempting, the Director shall
9 first consult with the Consumer Financial Pro-
10 tection Agency and shall take such Agency's
11 views into account when making the determina-
12 tion.
13 "(4) RULE OF CONSTRUCTION.—This Act does
14 not occupy the field in any area of State law.
15 "(5) STANDARDS OF REVIEW.—
16 "(A) PREEMPTION.—A court reviewing
17 any determinations made by the Director re-
18 garding preemption of a State law by this Act
19 shall assess the validity of such determinations
20 depending upon the thoroughness evident in the
21 agency's consideration, the validity of the agen-
22 cy's reasoning, the consistency with other valid
23 determinations made by the agency, and other
24 factors which the court finds persuasive and rel-
25 evant to its decision.

1 "(B) SAVINGS CLAUSE.—Except as pro-
2 vided in subparagraph (A), nothing in this sec-
3 tion shall affect the deference that a court may
4 afford to the Director in making determinations
5 regarding the meaning or interpretation of the
6 Home Owners' Loan Act or other Federal laws.
7 "(6) OTS DETERMINATION NOT DELEGABLE.—
8 Any regulation, order, or determination made by the
9 Director of the Office of Thrift Supervision under
10 subsection (b)(1)(B) shall be made by the Director
11 and shall not be delegable to another officer or em-
12 ployee of the Director of the Office of Thrift Super-
13 vision.

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:

1 "(g) PRESERVATION OF POWERS RELATED TO
2 CHARGING OF INTEREST.—No provision of this title shall
3 be construed as altering or otherwise affecting the author-
4 ity conferred by section 4(g) of the Home Owners' Loan
5 Act (12 U.S.C. 1463(g)) for the charging of interest by
6 a Federal savings association at the rate allowed by the
7 laws of the State, territory, or district where the bank is
8 located, including with respect to the meaning of 'interest'
9 under such provision.
10 "(h) TRANSPARENCY OF OTS PREEMPTION DETER-
11 MINATIONS.—The Director of the Office of Thrift Super-
12 vision shall publish and update no less frequently than
13 quarterly, a list of preemption determinations by such Di-
14 rector then in effect that identifies the activities and prac-
15 tices covered by each determination and the requirements
16 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:

1 (e) STUDY OF EFFECTS CONSUMER FINANCIAL PRO-
2 TECTION AGENCY REGULATIONS AND STANDARDS.—
3 (1) STUDY REQUIRED.—The Council shall con-
4 duct a study of the effects that regulations and
5 standards of the Consumer Financial Protection
6 Agency will have on all covered persons (as such
7 term is defined in section 4002(9)), including non-
8 depository institution covered persons. The Director
9 of the Consumer Financial Protection Agency shall
10 take the findings of the study into account when
11 issuing regulations.
12 (2) VALUE OF NONBANK PRODUCTS.—The
13 study shall include an evaluation and assessment of
14 the appropriateness of using "APR" as a true meas-
15 ure of the value of all nonbank products.
16 (3) SUBMISSION.—Not later than 240 days
17 after the date of the enactment of this Act, the Di-
18 rector of the Consumer Financial Protection Agency
19 shall submit the study to Congress and include any
20 recommendations the Director may have for changes
21 in law and regulations to improve consumer protec-
22 tions and maintain access to credit.

Page 734, strike lines 8 through 12, and insert the following:

1 (A) consider the potential benefits and
2 costs to consumers, covered persons, and the
3 Federal Government, including the potential re-
4 duction of consumers' access to consumer finan-
5 cial products or services, resulting from such
6 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:

7 (i) NO ONE SIZE FITS ALL REGULATION OF
8 NONBANK PRODUCTS.—The Director shall be required to
9 issue only product specific rules and regulations for each
10 of the non-bank products under the jurisdiction of the
11 Agency.
12 (j) NONBANK REGULATORY APPEAL RIGHTS.—
13 (1) ADMINISTRATIVE.—The Agency shall estab-
14 lish a procedure through which a nonbank financial
15 company that has been given contradictory or con-
16 flicting supervisory determinations or directives from
17 the Agency and their prudential supervisors will be

1 able to appeal the decisions to a disinterested gov-
2 erning panel.
3 (2) JUDICIAL REVIEW.—Any nonbank financial
4 company which has been subjected to contradictory
5 or conflicting supervisory determinations or direc-
6 tives may seek judicial review by filing a petition for
7 such review in the United States Court of Appeals
8 for the District of Columbia.

Page 731, after line 24, insert the following new subsection:

9 (h) ASSESSMENTS FOR CERTAIN NONDEPOSITORY
10 INSTITUTION COVERED PERSONS.—
11 (1) IN GENERAL.—Notwithstanding any other
12 provision of this Act, a nondepository institution
13 covered person shall not be subject to assessments
14 by the Agency if—
15 (A) the assets that are financial activities
16 of that nondepository covered person represent
17 less than a substantial portion of its total as-
18 sets; and
19 (B) the gross revenues derived from finan-
20 cial activities of that nondepository covered per-
21 son are less than a substantial portion of its
22 gross revenues.

1 (2) EXTENSIVE CONSUMER FINANCIAL PROD-
2 UCTS OR SERVICES OPERATIONS.—Paragraph (1)
3 shall not apply to nondepository institution covered
4 person that the Director determines has a level of
5 assets or revenues derived from financial activities,
6 a number of transactions in consumer financial
7 products or services, or a number of accounts relat-
8 ing to consumer financial products or services that
9 the Director determines represents an extensive con-
10 sumer 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:

11 (1) in subsection (a)(1), by striking "(h)" and
12 inserting "(f)";

Page 1019, line 23, strike "(1)" and insert "(2)".

Page 1020, strike lines 6 through 13 and insert the following:

1 (3) by striking subsection (c);

2 (4) in subsection (d), by striking "(d)(1) The
3 Commission's" and all that follows through the end
4 of paragraph (2) and by redesignating paragraph (3)
5 of such subsection as subsection (c);

6 (5) In such subsection (c) (as so redesignated),
7 by inserting "prescribed" after "any rule";

8 (6) by striking subsections (f), (i), and (j) and
9 redesignating subsections (e), (g), and (h) as sub-
10 sections (d), (e), and (f), respectively;

Page 1020, line 14, strike "(4)" and insert "(7)".

Page 1020, after line 14, insert the following:

11 (A) in paragraph (1)(A), by striking "pro-
12 mulgated" and inserting "prescribed";

Page 1020, line 15, strike "(A)" and insert "(B)".

Page 1020, strike lines 17 through 20 and insert the following:

13 (C) in paragraph (3), by striking "The
14 court shall hold unlawful" and all that follows
15 through the end of the paragraph; and

16 (D) by striking paragraphs (4) and (5)
17 and inserting the following:

1 "(4) The procedure set forth in this subsection for
2 judicial review of a rule prescribed under subsection
3 (a)(1)(B) is the exclusive means for such review, other
4 than in an enforcement proceeding."; and
5 (7) in subsection (e)(2) (as so redesignated), by
6 striking "class or persons" and inserting "class of
7 persons".

Page 754, after line 1, add the following new subsection at the end of section 4203:

8 (h) ASSISTIVE DIVISION FOR COMMUNITY FINANCIAL
9 INSTITUTIONS.—
10 (1) ESTABLISHMENT; PURPOSE.—There is es-
11 tablished in the Agency an office to be known as the
12 "Assistive Division for Community Financial Institu-
13 tions" to advise the Director on the impact of Agen-
14 cy policies and regulations on community financial
15 institutions and to help ensure that the policies and
16 regulations of the Agency do not unduly burden
17 community financial institutions.
18 (2) ADDITIONAL DUTIES.—The Assistive Divi-
19 sion for Community Financial Institutions shall
20 also—
21 (A) provide assistance to and respond to
22 inquiries from community financial institutions
23 regarding policies of the Agency and the effects

1 of such policies on community financial institu-
2 tions;
3 (B) provide educational materials, training
4 aides, and support to community financial insti-
5 tutions with respect to any new regulatory obli-
6 gations the Agency establishes during the initial
7 rule-making period;
8 (C) establish and maintain a toll-free tele-
9 phone number, to be available at least 8 hours
10 a day and 7 days a week, at which community
11 financial institution may make inquiries and re-
12 ceive assistance under subparagraph (A); and
13 (D) perform other duties and exercise such
14 other powers set by the Director.

Page 949, after line 2, add the following new section (and update the table of contents appropriately):

15 **SEC. 4704. REPORTING OF MORTGAGE DATA BY STATE.**
16 (a) IN GENERAL.—Section 104(a) of the Helping
17 Families Save Their Homes Act of 2009 (division A of
18 Public Law 111–22) is amended—
19 (1) in paragraph (2), by striking "resulting"
20 and inserting "in each State that result";
21 (2) in paragraph (3), by inserting "each State
22 for" after "modifications in"; and

1 (3) in paragraph (4), by inserting "in each
2 State" after "total number of loans".
3 (b) CONFORMING AMENDMENT.—Section
4 104(b)(1)(A) of such Act is amended by adding at the end
5 the following sentence: "Not later than 60 days after the
6 date of the enactment of the Wall Street Reform and Con-
7 sumer Protection Act of 2009, the Comptroller of the Cur-
8 rency and the Director of the Office of Thrift Supervision
9 shall update such requirements to reflect amendments
10 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):

11 **SEC. 9702. REPORTING OF MORTGAGE DATA BY STATE.**
12 (a) IN GENERAL.—Section 104(a) of the Helping
13 Families Save Their Homes Act of 2009 (division A of
14 Public Law 111–22) is amended—
15 (1) in paragraph (2), by striking "resulting"
16 and inserting "in each State that result";
17 (2) in paragraph (3), by inserting "each State
18 for" after "modifications in"; and

1 (3) in paragraph (4), by inserting "in each
2 State" after "total number of loans".
3 (b) CONFORMING AMENDMENT.—Section
4 104(b)(1)(A) of such Act is amended by adding at the end
5 the following sentence: "Not later than 60 days after the
6 date of the enactment of the Wall Street Reform and Con-
7 sumer Protection Act of 2009, the Comptroller of the Cur-
8 rency and the Director of the Office of Thrift Supervision
9 shall update such requirements to reflect amendments
10 made to this section by such Act.".

Page 119, strike lines 12 to 13 and insert the following new paragraph:

11 (1) the Board determines that a specified finan-
12 cial company fails to meet prudential standards es-
13 tablished 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:

14 (A) by amending paragraph (1)(A) to read
15 as follows:
16 "(A) IN GENERAL.—Each credit rating
17 agency shall register as a nationally recognized
18 statistical rating organization for the purposes

1 of this title (in this section referred to as the
2 'applicant'), and shall file with the Commission
3 an application for registration, in such form as
4 the Commission shall require, by rule or regula-
5 tion issued in accordance with subsection (n),
6 and containing the information described in
7 subparagraph (B).".

Page 1035, line 10, strike "and".

Page 1035, line 12, insert "and" after the semicolon and after such line insert the following:

8 (D) by adding at the end of paragraph (1)
9 the following:
10 "(F) EXEMPTIONS.—The registration re-
11 quirement in subparagraph (A) shall not apply
12 to—
13 "(i) a credit rating agency if the cred-
14 it rating agency—
15 "(I) does not engage in the provi-
16 sion of credit ratings to issuers of se-
17 curities for a fee; and
18 "(II) issues credit ratings only in
19 any bona fide newspaper, news maga-
20 zine, or business or financial publica-

1 tion of general and regular circula-
2 tion; or
3 "(ii) such other persons as the Com-
4 mission may designate by rules and regula-
5 tions or order when in the public interest
6 and for the protection of investors.".

Page 1067, after line 20, insert the following:

7 (b) CONFORMING AMENDMENT.—Section 3(a)(62) of
8 the Securities Exchange Act of 1934 is amended by strik-
9 ing subparagraph (A) and redesignating subparagraphs
10 (B) and (C) as subparagraphs (A) and (B), respectively.

Page 731, after line 24, insert the following:

11 (4) FINANCIAL EDUCATION AND COUNSELING
12 PROGRAM.—
13 (A) IN GENERAL.—To the extent such vic-
14 tims cannot be located or such payments are
15 otherwise not practicable, 5 percent of the Vic-
16 tims Relief Fund shall be transferred, up to
17 $10,000,000 on an annual basis, to the Sec-
18 retary of the Treasury so that the Secretary
19 may carry out the Financial Education and
20 Counseling Grant Program established under
21 section 1132 of the Housing and Economic Re-
22 covery Act of 2008 (12 U.S.C. 1701).

1 (B) MEMORANDUM OF UNDERSTANDING.—
2 Not later than 12 months after the date of en-
3 actment of this subtitle, the Director shall enter
4 into a memorandum of understanding with the
5 Secretary of the Treasury to coordinate the re-
6 lease of Civil Penalty Fund amounts under sub-
7 paragraph (A).
8 (C) ASSISTANCE FOR INDIVIDUALS AT FI-
9 NANCIAL RISK.—Section 1132 of the Housing
10 and Economic Recovery Act of 2008 (12 U.S.C.
11 1701) is amended—
12 (i) in subsection (a), by striking "pro-
13 spective homebuyers" each place that term
14 appears and inserting "individuals at fi-
15 nancial risk";
16 (ii) in subsection (b)—
17 (I) in paragraph (1), by striking
18 "prospective homebuyers" and insert-
19 ing "individuals at financial risk";
20 and
21 (II) by adding at the end the fol-
22 lowing:
23 "(3) DETERMINATION OF FINANCIAL RISK.—
24 For purposes of this section, the Director of the
25 Consumer Financial Protection Agency shall estab-

1 lish the criteria used to determine whether an indi-
2 vidual is at financial risk, and the Secretary shall
3 use such criteria when selecting organizations under
4 paragraph (2)."; and
5 (iii) in subsection (c)(1)—
6 (I) in subparagraph (A), by strik-
7 ing "or";
8 (II) in subparagraph (B), by
9 striking the period and inserting "
10 or"; and
11 (III) by adding at the end the
12 following:
13 "(C) a nonprofit corporation that—
14 "(i) is exempt from taxation under
15 section 501(c)(3) of the Internal Revenue
16 Code of 1986; and
17 "(ii) specializes or has expertise in
18 working with individuals at financial
19 risk.".

Page 1278, after line 17 insert the following:

20 (7) Geographic disparities in access to and cost
21 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):

1 **SEC. 1100. FEDERAL RESERVE BOARD AUTHORITY THAT OF**
2 **AGENT ACTING ON BEHALF OF COUNCIL.**
3 For purposes of this subtitle, the Board of Governors
4 of the Federal Reserve System shall act in the capacity
5 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):

6 "(8) APPLICABLE PRIVILEGES NOT WAIVED.—
7 An investment advisor, and investment advisor to a
8 private fund, a private fund, foreign private fund ad-
9 visor, a foreign private fund, an advisor to a venture
10 capital fund, a venture capital fund, or other person
11 shall not be compelled to waive and shall not be

1 deemed to have waived any privilege otherwise appli-
2 cable to any data or information by transferring the
3 data or information to, or permitting that data or
4 information to be used by—
5 "(A) the Financial Services Oversight
6 Council; (B)
7 "(B) the Commission;
8 "(C) any Federal financial regulator or
9 State financial regulator, in any capacity; or
10 "(D) any other agency of the Federal Gov-
11 ernment (as defined in section 6 of title 18,
12 United States Code).".

Page 701, after line 9, insert the following:

13 (D) CONSUMER COMPLAINT WEBSITE.—
14 The Director shall establish an Internet website
15 for consumer complaints and inquiries con-
16 cerning institutions regulated by the Agency.
17 The website shall be interoperable with the
18 database established under subparagraph (A).

Page 825, after line 12, insert the following:

19 **SEC. 4313. OVERDRAFT PROTECTION NOTICE REQUIRE-**
20 **MENTS.**
21 Not later than 180 days after the date of the enact-
22 ment of this Act, the Director shall promulgate a new rule

1 that requires banks to prominently place in each consumer
2 branch office information regarding the fees and charges
3 associated with enrollment in the bank's overdraft protec-
4 tion 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:

5 (i) RULE OF CONSTRUCTION.—Nothing in subsection
6 (h) shall be construed as limiting the authority of a Fed-
7 eral financial regulatory agency to take action with respect
8 to a financial company subject to the jurisdiction of such
9 agency pursuant to applicable law other than this section.

Page 22, after line 12, insert the following new subparagraph:

1 (C) A State securities commissioner (or an
2 officer performing like functions), to be des-
3 ignated by a selection process determined by
4 such State securities commissioners, provided
5 that the term for which a State securities com-
6 missioner may serve shall last no more than the
7 2-year period beginning on the date that the
8 commissioner is selected.

Page 253, after line 21, insert the following new paragraph:

9 (3) Section 4(j) of the Bank Holding Company
10 Act of 1956 is amended by inserting after paragraph
11 (4) the following new paragraph (and redesignating
12 succeeding paragraphs accordingly):
13 "(5) FINANCIAL STABILITY.—
14 "(A) IN GENERAL.—In every case, the
15 Board shall take into consideration the extent
16 to which the proposed acquisition, merger, or
17 consolidation may pose risk to the stability of
18 the United States financial system or the econ-
19 omy of the United States, including the result-
20 ing scope, nature, size, scale, concentration, or
21 interconnectedness of activities that are finan-
22 cial in nature.

1 "(B) STANDARDS FOR APPROVAL.—The
2 Board may, in the sole discretion of the Board,
3 disapprove any acquisition, merger, or consoli-
4 dation of, or by, a financial holding company
5 subject to stricter standards if the Board deter-
6 mines that the resulting concentration of liabil-
7 ities on a consolidated basis is likely to pose a
8 great threat to financial stability during times
9 of severe economic distress.".

Page 255, after line 2, insert the following new section:

10 **SEC. 1316. MUTUAL NATIONAL BANKS AND FEDERAL MU-**
11 **TUAL BANK HOLDING COMPANIES AUTHOR-**
12 **IZED.**

13 (a) IN GENERAL.—Chapter one of title LXII of the
14 Revised Statutes of the United States (12 U.S.C. 21 et
15 seq.) is amended by inserting after section 5133 the fol-
16 lowing new sections:

17 **"SEC. 5133A. MUTUAL NATIONAL BANKS.**

18 "(a) IN GENERAL.—Notwithstanding the section des-
19 ignated the 'Third' of section 5134, in order to provide
20 mutual institutions for the deposit of funds, the extension
21 of credit, and provision of other services, the Comptroller
22 of the Currency may charter mutual national banks either
23 de novo or through a conversion of any insured depository

1 institution or any State mutual bank or credit union, sub-
2 ject to regulations prescribed by the Comptroller of the
3 Currency in accordance with this section. The powers con-
4 ferred by this section are intended to provide for the cre-
5 ation and maintenance of mutual national banks as bodies
6 corporate existing in perpetuity for the benefit of their de-
7 positors and the communities in which they operate.

8 "(b) REGULATIONS.—

9 "(1) REGULATIONS OF THE COMPTROLLER.—
10 The Comptroller of the Currency is authorized to
11 prescribe appropriate regulations for the organiza-
12 tion, incorporation, examination, operation, and reg-
13 ulation of mutual national banks. Except to the ex-
14 tent that such existing regulations conflict with sec-
15 tions 5133A and 5133B, mutual national banks
16 shall be subject to the regulations of the Director of
17 the Office of Thrift Supervision governing corporate
18 organization, governance, and conversion of mutual
19 institutions, as in effect on the date of the enact-
20 ment of the Wall Street Reform and Consumer Pro-
21 tection Act of 2009, including parts 543, 544, 546,
22 563b, and 563c of chapter V of title 12, Code of
23 Federal Regulations (as in effect on that date), for
24 up to 3 years beginning on the date of the enact-

1 ment of the Wall Street Reform and Consumer Pro-
2 tection Act of 2009.
3 "(2) APPLICABILITY OF CAPITAL STOCK RE-
4 QUIREMENTS.—The Comptroller of the Currency
5 shall prescribe regulations regarding the manner in
6 which requirements of this title with respect to cap-
7 ital stock, and limitations imposed on national banks
8 under this title based on capital stock, shall apply to
9 mutual national banks.
10 "(c) CONVERSIONS.—
11 "(1) CONVERSION OF A MUTUAL DEPOSITORY
12 TO A MUTUAL NATIONAL BANK.—Subject to such
13 regulations as the Comptroller of the Currency may
14 prescribe for the protection of depositors' rights and
15 for any other purpose the Comptroller of the Cur-
16 rency may consider appropriate, any mutual deposi-
17 tory may convert to a mutual national bank by filing
18 with the Comptroller of the Currency a notice of its
19 election to convert on a specified date that is not
20 earlier than 30 days after the date on which the no-
21 tice is filed, and the mutual depository shall be con-
22 verted to a mutual national bank charter on the date
23 specified in the notice.
24 "(2) CONVERSION TO STOCK NATIONAL
25 BANK.—Subject to such regulations as the Comp-

1 troller of the Currency may prescribe for the protec-
2 tion of depositors' rights and for any other purpose
3 the Comptroller of the Currency may consider ap-
4 propriate, any national bank that is organized in the
5 mutual form under subsection (a) may reorganize as
6 a stock national bank.

7 "(3) CONVERSION TO STATE BANKS.—Any na-
8 tional mutual bank may convert to a State bank
9 charter in accordance with regulations prescribed by
10 the Comptroller of the Currency and applicable
11 State law.

12 "(d) TERMINATING MUTUALITY.—If a mutual na-
13 tional bank elects to terminate mutuality, it must do so
14 by—

15 "(1) liquidating; or

16 "(2) converting to a national banking associa-
17 tion operating in stock form.

18 "(e) STATUS AND RIGHTS OF MEMBERS.—

19 "(1) In general, the status of a member is pri-
20 marily that of a depositor and secondarily that of a
21 holder of a contingent right to participate in the eq-
22 uity of a mutual national bank upon a liquidation or
23 conversion.

24 "(2) Each member of a mutual national bank
25 shall have the following rights:

1 "(A) Such rights as may be agreed upon,
2 by contract, between the member and the mu-
3 tual national bank.
4 "(B) The right to vote for members of the
5 board of directors of the mutual national bank.
6 "(C) The right to attend any meeting of
7 members properly called by the board of direc-
8 tors of a mutual national bank.
9 "(D) In the event the board of directors,
10 in its sole discretion, determines a conversion of
11 a mutual national bank to a national banking
12 association operating in stock form is in the
13 best interests of the community in which the
14 bank operates and the members approve the
15 conversion through a special proxy, then the
16 members as of a record date set by the board
17 of directors shall have the first right to sub-
18 scribe for and purchase stock in the converted
19 bank.
20 "(E) In the event the board of directors, in
21 its sole discretion, determines a liquidation of
22 the mutual national bank is in the best inter-
23 ests of the community in which the bank oper-
24 ates and the members approve the liquidation,
25 or if for any other reason the bank is liquidated

1 by operation of law, then the members as of the
2 date of liquidation shall have the right to have
3 credited to their accounts, on a pro rata basis,
4 any residual assets left after the liquidation of
5 the mutual national bank.
6 "(3) In the consideration of all questions re-
7 quiring action by the members of a national mutual
8 bank, the bank may provide in its charter that each
9 member shall be permitted (i) one vote per member,
10 or (ii) to cast one vote for each $100, or fraction
11 thereof, of the withdrawal value of the member's ac-
12 count, but not more than 1,000 votes per member.
13 "(f) PROXIES.—
14 "(1) A member may give, in writing or elec-
15 tronically, a perpetual proxy to a committee of the
16 board of directors of a mutual depository, provided
17 that the member may revoke such a proxy in writing
18 or electronically, with such revocation to take effect
19 after six business days.
20 "(2) Such proxies may be used to vote on any
21 issue requiring approval of the members, including
22 the conversion of a mutual depository into a mutual
23 national bank and the reorganization of a mutual
24 national bank into a Federal mutual bank holding
25 company, except that, without a prior finding by the

1 regulator of the mutual national bank that such ac-
2 tion is needed to avoid loss to the Federal Deposit
3 Insurance Corporation's deposit insurance fund or to
4 protect the stability of the United States financial
5 system, such proxies may not be used to vote in
6 favor of—
7 "(A) terminating mutuality for a mutual
8 national bank or a Federal mutual bank holding
9 company;
10 "(B) permitting the modification of a Fed-
11 eral mutual bank holding company; or
12 "(C) issuing mutual capital certificates
13 (except when used to found a mutual national
14 bank or a Federal mutual bank holding com-
15 pany de novo).
16 "(3) Proxies given by a member, in writing or
17 electronically, to management of, or to a committee
18 of the board of directors of, a mutual depository
19 shall not be deemed to have been revoked solely be-
20 cause of, and shall continue to exist following, a con-
21 version to a mutual national bank and any concur-
22 rent or subsequent reorganization to a Federal mu-
23 tual bank holding company.
24 "(g) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 "(1) INSURED DEPOSITORY INSTITUTION.—The
2 term 'insured depository institution' has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.
5 "(2) MUTUAL NATIONAL BANK.—The term
6 'mutual national bank' means a national banking as-
7 sociation that operates in mutual form and is char-
8 tered by the Comptroller of the Currency under this
9 section.
10 "(3) MUTUAL DEPOSITORY.—The term 'mutual
11 depository' means a depository institution that is or-
12 ganized in non-stock form, including a Federal non-
13 stock depository and any form of non-stock deposi-
14 tory provided for under State law, the deposits of
15 which are insured by an instrumentality of the Fed-
16 eral Government.
17 "(4) MUTUALITY.—The term 'mutuality' means
18 the quality of being an insured depository institution
19 organized under a Federal or State law providing for
20 the organization of non-stock depository institutions,
21 or a holding company organized under a Federal or
22 State law providing for the organization of non-stock
23 entities that control one or more depository institu-
24 tions.

1 "(5) MEMBER.—The term 'member' means
2 each tax-liable depositor in a mutual depository's
3 savings, demand, or other authorized depository ac-
4 counts and each tax-liable depositor in such an ac-
5 count in a depository subsidiary of a Federal mutual
6 bank holding company.
7 "(6) TAX LIABLE DEPOSITOR.—The term 'tax
8 liable depositor' means the single person responsible
9 for paying any Federal taxes due on any interest
10 paid on any deposits held within any savings, de-
11 mand, or other authorized depository account or ac-
12 counts with any mutual depository.
13 "(7) MEMBERSHIP RIGHTS.—The term 'mem-
14 bership rights' means the rights of each member
15 under this section.
16 "(h) CONFORMING REFERENCES.—Unless otherwise
17 provided by the Comptroller of the Currency—
18 "(1) any reference in any Federal law to a na-
19 tional bank operating in stock form, including a ref-
20 erence to the term 'national banking association',
21 'member bank', 'national bank', 'national associa-
22 tion', 'bank', 'insured bank', 'insured depository in-
23 stitution', or 'depository institution', shall be deemed
24 to refer also to a mutual national bank;

1 "(2) any reference in any Federal law to the
2 term 'board of directors', 'director', or 'directors' of
3 a national bank operating in stock form shall be
4 deemed to refer also to the board of a mutual na-
5 tional bank; and
6 "(3) any terms in Federal law that may apply
7 only to a national bank operating in stock form, in-
8 cluding the terms 'stock', 'shares', 'shares of stock',
9 'capital stock', 'common stock', 'stock certificate',
10 'stock certificates', 'certificates representing shares
11 of stock', 'stock dividend', 'transferable stock', 'each
12 class of stock', 'cumulate such shares', 'par value',
13 'preferred stock' shall not apply to a mutual national
14 bank, unless the Comptroller of the Currency deter-
15 mines that the context requires otherwise.

16 **"SEC. 5133B. FEDERAL MUTUAL BANK HOLDING COMPA-**
17 **NIES.**

18 "(a) REORGANIZATION OF MUTUAL NATIONAL BANK
19 AS A HOLDING COMPANY.—
20 "(1) IN GENERAL.—Subject to approval under
21 the Bank Holding Company Act of 1956, a mutual
22 national bank may reorganize so as to become a
23 Federal mutual bank holding company by submitting
24 a reorganization plan to the appropriate bank hold-
25 ing company regulator.

1 "(2) PLAN APPROVAL.—Upon the approval of
2 the reorganization plan by the appropriate bank
3 holding company regulator and the issuance of the
4 appropriate charters—
5 "(A) the substantial part of the mutual na-
6 tional bank's assets and liabilities, including all
7 of the bank's insured liabilities, shall be trans-
8 ferred to a national banking association, a ma-
9 jority of the shares of voting stock of which is
10 owned, directly or indirectly, by the mutual na-
11 tional bank that is to become a Federal mutual
12 bank holding company; and
13 "(B) the mutual national bank shall be-
14 come a Federal mutual bank holding company.
15 "(b) DIRECTORS AND CERTAIN ACCOUNT HOLDERS'
16 APPROVAL OF PLAN REQUIRED.—This subsection does
17 not authorize a reorganization unless—
18 "(1) a majority of the mutual national bank's
19 board of directors has approved the plan providing
20 for such reorganization; and
21 "(2) a majority of members has approved the
22 plan at a meeting held at the call of the directors
23 under the procedures prescribed by the bank's char-
24 ter and bylaws.

1 "(c) OWNERSHIP OF DEPOSITORY SUBSIDIARIES.—
2 To avoid terminating mutuality, a Federal mutual bank
3 holding company must own, directly or indirectly, a major-
4 ity of the shares of voting stock of each of its depository
5 subsidiaries.

6 "(d) NO TERMINATION OF MUTUALITY.—Neither a
7 reorganization of a mutual depository nor a modification
8 of a Federal mutual bank holding company shall cause a
9 termination of mutuality.

10 "(e) RETENTION OF CAPITAL.—In connection with a
11 transaction described in subsection (a), a mutual national
12 bank may, subject to the approval of the appropriate bank
13 holding company regulator, retain capital at the holding
14 company level to the extent that the capital retained at
15 the holding company level exceeds the amount of capital
16 required for the national banking association chartered as
17 a part of a transaction described in subsection (a) to meet
18 all relevant capital standards established by the Comp-
19 troller of the Currency for national banking associations.

20 "(f) TERMINATING MUTUALITY.—If a Federal mu-
21 tual bank holding company elects to terminate mutuality,
22 it must do so by either liquidating or converting to a bank
23 holding company operating in stock form.

24 "(g) MEMBERSHIP RIGHTS.—Holders of savings, de-
25 mand, or other authorized depository accounts in a deposi-

1 tory subsidiary of a Federal mutual bank holding company
2 shall have the same membership rights with respect to the
3 Federal mutual bank holding company as those holders
4 would have had if the depository subsidiary of the Federal
5 mutual bank holding company had been a mutual national
6 bank.

7 "(h) REGULATION.—A Federal mutual bank holding
8 company shall be—

9 "(1) chartered by the appropriate bank holding
10 company regulator and shall be subject to such regu-
11 lations as the appropriate bank holding company
12 regulator shall prescribe; and

13 "(2) regulated under the Bank Holding Com-
14 pany Act of 1956 on the same terms and subject to
15 the same limitations as any other company that con-
16 trols a bank.

17 "(i) CAPITAL IMPROVEMENT.—

18 "(1) PLEDGE OF STOCK OF NATIONAL BANK
19 SUBSIDIARY.—This section shall not prohibit a Fed-
20 eral mutual bank holding company from pledging all
21 or a portion of the stock of the national banking as-
22 sociation chartered as part of a transaction de-
23 scribed in subsection (a) to raise capital for such na-
24 tional banking association.

1 "(2) ISSUANCE OF NONVOTING SHARES.—This
2 section shall not prohibit a national banking associa-
3 tion chartered as part of a transaction described in
4 subsection (a) from issuing any nonvoting shares or
5 less than 50 percent of the voting shares of such
6 bank to any person other than the Federal mutual
7 bank holding company.
8 "(j) INSOLVENCY AND LIQUIDATION.—
9 "(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the appropriate bank holding com-
11 pany regulator may file a petition under chapter 7
12 of title 11, United States Code, with respect to a
13 Federal mutual bank holding company upon—
14 "(A) the default of any national bank—
15 "(i) the stock of which is owned by
16 the Federal mutual bank holding company;
17 and
18 "(ii) that was chartered in a trans-
19 action described in subsection (a); or
20 "(B) a foreclosure on a pledge by the Fed-
21 eral mutual bank holding company described in
22 subsection (i)(1).
23 "(2) DISTRIBUTION OF NET PROCEEDS.—Ex-
24 cept as provided in paragraph (3), the net proceeds
25 of any liquidation of any Federal mutual bank hold-

1 ing company under paragraph (1) shall be trans-
2 ferred to persons who hold membership interests in
3 such Federal mutual bank holding company.
4 "(3) RECOVERY BY FDIC.—If the Federal De-
5 posit Insurance Corporation incurs a loss as a result
6 of the default of any insured bank subsidiary of a
7 Federal mutual bank holding company that is liq-
8 uidated under paragraph (1), the Federal Deposit
9 Insurance Corporation shall succeed to the interests
10 of the depositors of the bank as members in the
11 Federal mutual bank holding company, to the extent
12 of the Federal Deposit Insurance Corporation's loss.
13 "(k) DEFINITIONS.—
14 "(1) FEDERAL MUTUAL BANK HOLDING COM-
15 PANY.—The term 'Federal mutual bank holding
16 company' means a holding company that is orga-
17 nized in mutual form and owns, directly or indi-
18 rectly, a majority of the shares of voting stock of
19 one or more depository subsidiaries of a Federal mu-
20 tual bank holding company.
21 "(2) DEPOSITORY SUBSIDIARY OF A FEDERAL
22 MUTUAL BANK HOLDING COMPANY.—The term 'de-
23 pository subsidiary of a Federal mutual bank hold-
24 ing company' means a depository institution orga-
25 nized in stock form that is insured by the Federal

1 Deposit Insurance Corporation, the majority of the
2 shares of voting stock of which are owned by the
3 Federal mutual bank holding company or its wholly
4 owned subsidiaries and none of the shares of stock
5 of which are pledged or otherwise subjected to lien
6 except as permitted in subsection (i).

7 "(3) REORGANIZATION OF A MUTUAL DEPOSI-
8 TORY.—The term 'reorganization of a mutual depos-
9 itory' means the conversion of a mutual depository
10 into a depository subsidiary of a Federal mutual
11 bank holding company.

12 "(4) MODIFICATION OF A FEDERAL MUTUAL
13 BANK HOLDING COMPANY.—The term 'modification
14 of a Federal mutual bank holding company' means
15 either (A) the sale of shares of common or preferred
16 stock in a depository subsidiary of a Federal mutual
17 bank holding company to any party other than the
18 subsidiary's parent Federal mutual bank holding
19 company or a wholly owned subsidiary of that par-
20 ent, or (B) the voluntary grant of a lien on shares
21 of common or preferred stock in a depository sub-
22 sidiary of a Federal mutual bank holding company.

23 "(5) DEFAULT.—With respect to a national
24 bank, the term 'default' means an adjudication or
25 other official determination by any court of com-

1 petent jurisdiction, the Comptroller of the Currency,
2 or other public authority pursuant to which a con-
3 servator, receiver, or other legal custodian is ap-
4 pointed for the national bank.

5 "(l) CONFORMING REFERENCES.—Unless otherwise
6 provided by the appropriate bank holding company regu-
7 lator—

8 "(1) any reference in any Federal law to a bank
9 holding company operating in stock form shall be
10 deemed to refer also to a Federal mutual bank hold-
11 ing company;

12 "(2) any reference in any Federal law to the
13 term 'board of directors', 'director', or 'directors' of
14 a national bank operating in stock form shall be
15 deemed to refer also to the board of a Federal mu-
16 tual bank holding company; and

17 "(3) any terms in Federal law that may apply
18 only to a national bank operating in stock form, in-
19 cluding the terms 'stock', 'shares', 'shares of stock',
20 'capital stock', 'common stock', 'stock certificate',
21 'stock certificates', 'certificates representing shares
22 of stock', 'stock dividend', 'transferable stock', 'each
23 class of stock', 'cumulate such shares', 'par value',
24 'preferred stock' shall not apply to a Federal mutual
25 bank holding company, unless the appropriate bank

1 holding company regulator determines that the con-
2 text requires otherwise.".

3 (b) LIMITATION ON FEDERAL REGULATION OF
4 STATE BANKS.—Except as otherwise provided in Federal
5 law, the Comptroller of the Currency, the Board of Gov-
6 ernors of the Federal Reserve System, and the Federal
7 Deposit Insurance Corporation may not adopt or enforce
8 any regulation that contravenes the corporate governance
9 rules prescribed by State law or regulation for State banks
10 unless the Director, Board, or Corporation finds that the
11 Federal regulation is necessary to assure the safety and
12 soundness of the State banks.

13 (c) TECHNICAL AMENDMENT.—The table of sections
14 for chapter one of title LXII of the Revised Statutes of
15 the United States (12 U.S.C. 21 et seq) is amended by
16 inserting after the item relating to section 5133 the fol-
17 lowing new items:

"5133A. Mutual national banks
"5133B. Federal mutual bank holding companies"

18 (d) APPROPRIATE FEDERAL BANKING AGENCY FOR
19 FEDERAL MUTUAL BANK HOLDING COMPANIES.—Sec-
20 tion 3(q)(1) of the Federal Deposit Insurance Act (12
21 U.S.C. 1813(q)(2)) is amended by inserting after subpara-
22 graph (F) the following new subparagraph:

23 "(G) supervisory or regulatory proceedings
24 arising from the authority given to the appro-

1 priate bank holding company regulator under
2 section 5133B of the Revised Statutes of the
3 United States.".
4 (e) MUTUAL HOLDING COMPANY CONVERSION.—
5 (1) IN GENERAL.—Any mutual holding com-
6 pany, including any form of mutual depository hold-
7 ing company provided for under State law, may con-
8 vert to a Federal mutual bank holding company by
9 filing with the appropriate bank holding company
10 regulator a notice of its election to convert on a
11 specified date that is not earlier than 30 days after
12 the date on which the notice is filed, and the mutual
13 holding company shall be converted to a Federal mu-
14 tual holding company charter on the date specified
15 in the notice.
16 (2) DEFINITIONS.—For purposes of this sub-
17 section, the following definitions shall apply:
18 (A) FEDERAL MUTUAL BANK HOLDING
19 COMPANY.—The term "Federal mutual bank
20 holding company" has the same meaning as in
21 section 5133B of the Revised Statutes of the
22 United States (as added by this section); and
23 (B) MUTUAL HOLDING COMPANY.—The
24 term "mutual holding company" has the same
25 meaning as in section 10(o)(10)(A) of the

1 Home Owners Loan Act as in effect on the day
2 before the date of enactment of this Act.
3 (f) EFFECTIVE DATE.—This section shall take effect
4 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):

5 **SEC. 1316. NATIONWIDE DEPOSIT CAP FOR INTERSTATE AC-**
6 **QUISITIONS.**
7 (a) AMENDMENTS TO THE BANK HOLDING COMPANY
8 ACT OF 1956.—
9 (1) CONCENTRATION LIMIT FOR BANK HOLDING
10 COMPANIES.—Section 3(d)(2)(A) of the Bank Hold-
11 ing Company Act (12 U.S.C. 1842(d)(2)(A)) is
12 amended by striking "paragraph (1)(A)"" and in-
13 serting "subsection (a) of this section".
14 (2) REMOVAL OF NONBANK SAVINGS ASSOCIA-
15 TION PROVISION IN LIGHT OF BEING DEFINED AS A
16 BANK.—Section 4 of the Bank Holding Company
17 Act is amended by striking subsection (i) and insert
18 the following new subsection:
19 "(i) [Repealed.]".
20 (b) AMENDMENTS TO THE FEDERAL DEPOSIT IN-
21 SURANCE ACT.—

1 (1) IN GENERAL.—Section 18(e) of the Federal
2 Deposit Insurance Act (12 U.S.C. I 828(c)) is
3 amended—
4 (A) by redesignating paragraph (12) as
5 paragraph (13); and
6 (B) by inserting after paragraph (11), the
7 following new paragraph:
8 "(12) NATIONWIDE DEPOSIT CAP.—The respon-
9 sible agency may not approve an application for an
10 interstate merger transaction if the resulting insured
11 depository institution (including all insured deposi-
12 tory institutions which are affiliates of the resulting
13 insured depository institution), upon consummation
14 of the transaction, would control more than 10 per-
15 cent of, the total amount of deposits of insured de-
16 pository institutions in the United States.".
17 (2) PARALLEL REQUIREMENT.—Section
18 44(b)(2) of the Federal Deposit Insurance Act (12
19 U.S.C. 1831u(b)(2)(A) is amended to read as fol-
20 lows:
21 "(A) NATIONWIDE CONCENTRATION LIM-
22 ITS.—The responsible agency may not approve
23 an application for an interstate merger trans-
24 action involving two or more insured depository
25 institutions if the resulting insured depository

1 institution (including all insured depository in-
2 stitutions which are affiliates of such institu-
3 tion), upon consummation of the transaction
4 would control more than 10 percent of the total
5 amount of deposits of insured depository insti-
6 tutions in the United States.".
7 (c) AMENDMENTS TO THE HOME OWNERS' LOAN
8 ACT.—Section 10(e)(2) of the Home Owners' Loan Act
9 (12 U.S.C. 467a(e)(2)) is amended—
10 (1) by striking "or" at the end of subparagraph
11 (C); and
12 (2) by striking the period at the end of sub-
13 paragraph (D), the following new subparagraph:
14 "(E) in the case of an application involving
15 an interstate acquisition, if the applicant (in-
16 cluding all insured depository institutions which
17 are affiliates of the applicant) controls, or upon
18 consummation of the acquisition for which such
19 application is filed would control, more than 10
20 percent of the total amount of deposits of in-
21 sured depository institutions in the United
22 States.".".

Page 763, beginning online 11, strike "authority to exercise" and all that follows through "this title" and insert "rulemaking, supervisory, enforcement or other au-

thority, including the authority to order assessments, under this title''.

Page 436, after line 11, insert the following new section:

1 **SEC. 1615. TREASURY STUDY.**

2 (a) STUDY REQUIRED.—The Secretary shall carry
3 out a study analyzing how the resolution authority pro-
4 vided under this subtitle should be funded. Such study
5 shall consider the following factors:

6 (1) The consequences of any assessments on the
7 overall recovery of the economy of the United States.

8 (2) Any immediate or continuing consequences
9 of assessments on other aspects of the economy of
10 the United States, including job creation, public and
11 private investments, small business loans, and gen-
12 eral credit availability.

13 (3) The consequences of any assessments on in-
14 dividual sectors of the financial services industry.

15 (4) The consequences of any assessments on the
16 financial integrity on individual firms within each
17 sector of the financial services industry.

18 (5) The appropriateness and effect of assess-
19 ments on firms that are subject to separate assess-
20 ments under existing State or Federal depositor, pol-
21 icyholder, or investor protection mechanisms and the

1 consequences of any such assessments on these
2 mechanisms themselves.
3 (6) The implications of assessments on all rel-
4 evant stakeholders, including taxpayers, depositors,
5 insurance policyholders, investors, counterparties,
6 and creditors.
7 (7) Evaluation of the appropriate assessment
8 base, including but not limited to factors such as as-
9 sets and liabilities, assets under management, policy-
10 holder reserves, other reserves, statutory and regu-
11 latory capital requirements, trusteed assets, and de-
12 posits and inflationary factors.
13 (b) REPORT.—Not later than the end of the 6-month
14 period beginning on the date of the enactment of this sub-
15 title, the Secretary shall issue a report to the Congress
16 containing all determinations and conclusions made by the
17 Secretary in carrying out the study required under sub-
18 section (a).

Page 894, after line 4, add at the end of section 4601(a)(1) the following new subparagraph:

19 (C) RETENTION OF CONSUMER ADVISORY
20 COUNCIL.—
21 (i) RETENTION AND CONTINU-
22 ATION.—Notwithstanding the transfer of
23 functions under subparagraph (A), the

1 Consumer Advisory Council established by
2 the Board of Governors pursuant to sec-
3 tion 703(b) of Public Law 90–321 (15
4 U.S.C. 1691b(b)) shall continue as an enti-
5 ty within the Federal Reserve System.
6 (ii) ADDITIONAL FUNCTIONS.—In ad-
7 dition to the functions performed by the
8 Consumer Advisory Council as of the des-
9 ignated transfer date, the Consumer Advi-
10 sory Council shall—
11 (I) submit to the Director (and
12 make available to the public) an an-
13 nual set of recommendations for con-
14 sumer protection regulations and meet
15 with the Director to discuss the an-
16 nual recommendations;
17 (II) meet with the Board of Gov-
18 ernors of the Federal Reserve System
19 at least once a year and provide oral
20 or written representations concerning
21 matters within the jurisdiction of the
22 Board; and
23 (III) call for information and
24 make recommendations in regard to
25 consumer protection regulations.

1 (iii) RESPONSE TO RECOMMENDA-
2 TIONS.—When the Chair of the Federal
3 Reserve testifies before Congress, the
4 Chair shall also testify about the rec-
5 ommendations of the Consumer Advisory
6 Council under clause (ii)(II) and its rec-
7 ommendations for consumer protection
8 regulations.

Page 216, line 21, strike "or".

Page 216, after line 21, insert the following new subparagraphs:

9 "(II) a change of control of an
10 industrial bank, its section 6 holding
11 company, or any entity that directly
12 or indirectly controls the industrial
13 bank, in a transaction other than a
14 merger described in subclause (I), by
15 an acquiring company that is pre-
16 dominately engaged in activities not
17 permissible for a financial holding
18 company pursuant to subsection (k),
19 if—
20 "(aa) the transaction is ap-
21 proved by the appropriate Fed-

1 eral banking agency and the
2 Board; and
3 "(bb) the industrial bank
4 does not thereafter establish a
5 domestic branch as defined in
6 section 3(o) of the Federal De-
7 posit Insurance Act (12 U.S.C.
8 1813(o)),
9 "(III) an inadvertent acquisition
10 of control, as determined by the
11 Board, if such inadvertent acquisition
12 of control is reversed or rectified with-
13 in 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:

14 (N) Section 626 of the Omnibus Appro-
15 priations Act, 2009 (Public Law 111–8).
16 (O) The Unlawful Internet Gambling En-
17 forcement 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:

1 (8) SECTION 149.—Section 149(b) of the Truth
2 in Lending Act (15 U.S.C. 1665d(b)) is amended by
3 inserting "the Federal Trade Commission," after "in
4 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 (5) SECTION 609.—Section 609(d)(1) of the
6 Fair Credit Reporting Act (15 U.S.C. 1681g(d)(1))

1 is amended by inserting "the Federal Trade Com-
2 mission," 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:

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

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

5 (B) in the heading of paragraph (3) by in-
6 serting "CONSUMER REPORTING" before
7 "AGENCY".

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

1 (7) SECTION 615.—Section 615 of the Fair
2 Credit Reporting Act (15 U.S.C. 1681m) is amend-
3 ed—
4 (A) in subsection (d)(2)(B), by inserting
5 "the Federal Trade Commission," after "in
6 consultation with";
7 (B) in subsection (e)(1), by striking "and
8 the Commission" and inserting "the Federal
9 Trade Commission, the Securities and Ex-
10 change Commission, and the Commodities Fu-
11 tures Trading Commission"; and
12 (C) by striking subparagraph (A) of sub-
13 section (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:

14 (C) in paragraph (2) of subsection (c)—
15 (i) by inserting "the Agency and" be-
16 fore "the Federal Trade Commission" in
17 the first sentence;
18 (ii) by inserting "Agency and the Fed-
19 eral Trade" after "provide the"; and

1 (iii) by inserting "Agency," before
2 "Federal Trade Commission" in the sec-
3 ond sentence;
4 (D) in paragraph (4) of subsection (c)—
5 (i) by inserting "Agency", before "the
6 Federal Trade Commission"; and
7 (ii) inserting "Agency, the Federal
8 Trade" after "complaint of the";
9 (E) in paragraph (2) of subsection (f), by
10 inserting "the Federal Trade Commission"
11 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:

12 (iii) in paragraph (1)(B)—

1 (I) by inserting "of Governors of
2 the Federal Reserve System" after
3 "Board"; and
4 (II) by striking "and" after the
5 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:

6 (iii) in paragraph (l)(B), by inserting
7 "of Governors of the Federal Reserve Sys-
8 tem" 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):

9 (a) SECTION 501.—Section 501(b) of the Gramm-
10 Leach-Bliley Act (15 U.S.C. 6801(b)) is amended by in-

1 serting "(other than the Consumer Financial Protection
2 Agency)" after "title".
3 (b) SECTION 502.—Section 502(e)(5) of the Gramm-
4 Leach-Bliley Act (15 U.S.C. 6802(e)(5)) is amended by
5 inserting "the Consumer Financial Protection Agency,"
6 after "(including".
7 (c) SECTION 503.—Section 503(e)(1) of the Gramm-
8 Leach-Bliley Act (15 U.S.C. 6803(e)(1)) is amended—
9 (1) by inserting "Consumer Financial Protec-
10 tion Agency in consultation with the other" before
11 "agencies"; and
12 (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:

13 (3) by inserting "the Federal banking agencies,
14 the National Credit Union Administration, the Sec-
15 retary of the Treasury, the Federal Trade Commis-
16 sion, and" before "representatives of State insurance
17 authorities".

Page 989, after line 15, insert the following:

18 (f) SECTION 507.—Subsection 507(b) of the Gramm-
19 Leach-Bliley Act (15 U.S.C. 6807(b)) is amended by strik-
20 ing "Federal Trade Commission" and inserting "Con-

1 sumer Financial Protection Agency, or in the case of a
2 rule under section 501(b), the Federal Trade Commission
3 or the Securities and Exchange Commission".

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

4 (2) by inserting a comma after "under this
5 Act";
6 (3) by inserting a comma after "subsection
7 (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:

8 **SEC. 4313. REVIEW, REPORT, AND PROGRAM WITH RE-**
9 **SPECT TO EXCHANGE FACILITATORS.**
10 (a) REVIEW.—The Director shall review all Federal
11 laws and regulations relating to the protection of persons
12 who utilize exchange facilitators.
13 (b) REPORT.—Not later than 180 days after the ef-
14 fective date of this subtitle, the Director shall submit to
15 Congress a report describing—
16 (1) recommendations for legislation to ensure
17 the appropriate protection of persons who utilize ex-
18 change facilitators;

1 (2) recommendations for updating the regula-
2 tions of Federal departments and agencies to ensure
3 the appropriate protection of such persons; and
4 (3) recommendations for Agency regulations to
5 ensure the appropriate protection of such persons.
6 (c) PROGRAM.—Not later than 180 days after the
7 date of the submission of the report under subsection (b),
8 the Director shall establish and carry out a program, uti-
9 lizing the authorities of the Agency, to protect persons
10 who utilize exchange facilitators.
11 (d) EXCHANGE FACILITATOR DEFINED.—In this sec-
12 tion, the term "exchange facilitator" means a person
13 that—
14 (1) facilitates, for a fee, an exchange of like-
15 kind property by entering into an agreement with a
16 taxpayer by which the exchange facilitator acquires
17 from the taxpayer the contractual rights to sell the
18 taxpayer's relinquished property and transfers a re-
19 placement property to the taxpayer as a qualified
20 intermediary (within the meaning of Treasury Regu-
21 lations section 1.1031(k)-1(g)(4)) or enters into an
22 agreement with the taxpayer to take title to a prop-
23 erty as an exchange accommodation titleholder
24 (within the meaning of Revenue Procedure 2000-37)
25 or enters into an agreement with a taxpayer to act

1 as a qualified trustee or qualified escrow holder
2 (within the meaning of Treasury Regulations section
3 1.1031(k)-1(g)(3));
4 (2) maintains an office for the purpose of solic-
5 iting business as an exchange facilitator; or
6 (3) purports to be an exchange facilitator by
7 advertising any of the services listed in paragraph
8 (1) or soliciting clients in printed publications, direct
9 mail, television or radio advertisements, telephone
10 calls, facsimile transmissions, or other electronic
11 communications directed to the general public for
12 purposes of providing any such services.

Page 255, after line 2, insert the following new section:

13 **SEC. 1316. DE NOVO BRANCHING INTO STATES.**

14 (a) NATIONAL BANKS.—Section 5155(g)(1)(A) of the
15 Revised Statutes (12 U.S.C. 36(g)(1)(A)) is amended to
16 read as follows:

17 "(A) the law of the State where the branch
18 is located, or is to be located, would permit es-
19 tablishment of the branch if the national bank
20 were a state bank chartered by such State;".

21 (b) STATE INSURED BANKS.—Section 18(d)(4)(A)(i)
22 of the Federal Deposit Insurance Act (12 U.S.C.
23 1828(d)(4)(A)(i)) is amended to read as follows:

1 "(i) the law of the State where the
2 branch is located, or is to be located, would
3 permit establishment of the branch if the
4 bank were a State bank chartered by such
5 State;".

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

Page 277, after line 22, insert the following:

6 (C) is not an insured depository institution
7 (as defined in section 3(c) of the Federal De-
8 posit Insurance act), a Federal credit union or
9 a State-chartered credit union (as such terms
10 are defined in section 101 of the Federal Credit
11 Union Act), or a government-sponsored enter-
12 prise (as such term is defined in section 1004(f)
13 of the Financial Institutions Reform, Recovery
14 and Enforcement Act of 1989 (12 U.S.C. 1811
15 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:

1 (v) AMOUNT SPECIFIED.—For pur-
2 poses of clause (iv), the amount specified
3 under this clause, in the case of a secured
4 creditor, is the amount of up to 10 per-
5 cent.

Page 318, after line 11, insert the following subparagraphs (and redesignate subparagraphs (B) through (E) as subparagraphs (J) through (M), respectively):

6 (B) PREFERENTIAL TRANSFERS.—The
7 Corporation as receiver for any covered finan-
8 cial company may avoid a transfer of an inter-
9 est of the covered financial company in property
10 that—
11 (i) was made to or for the benefit of
12 a creditor;
13 (ii) was made for or on account of an
14 antecedent debt that was owed by the cov-
15 ered financial company before the transfer
16 was made;
17 (iii) was made while the covered fi-
18 nancial company was insolvent;
19 (iv) was made—
20 (I) on or within 90 days before
21 the date on which the Corporation
22 was appointed receiver; or

1 (II) between 90 days and one
2 year before the date that the Corpora-
3 tion was appointed receiver, if such
4 creditor at the time of the transfer
5 was an insider, as that term is defined
6 in section 101(31) of title 11, United
7 States Code; and
8 (v) enables such creditor to receive
9 more than such creditor would receive in
10 the liquidation of the covered financial
11 company if—
12 (I) the transfer had not been
13 made; and
14 (II) such creditor received pay-
15 ment of such debt to the extent pro-
16 vided by the provisions of this sub-
17 title.
18 (C) POST-RECEIVERSHIP TRANSACTIONS.—
19 The Corporation as receiver for any covered fi-
20 nancial company may avoid a transfer of prop-
21 erty of the receivership that occurred after the
22 Corporation was appointed receiver that was
23 not authorized under this title.
24 (D) RIGHT OF RECOVERY.—To the extent
25 that a transfer is avoided under subparagraphs

1 (A), (B) or (C), the Corporation may recover,
2 for the benefit of the covered financial com-
3 pany, the property transferred or, if a court so
4 orders, the value of such property from—
5 (i) the initial transferee of such trans-
6 fer or the entity for whose benefit such
7 transfer was made; or
8 (ii) any immediate or mediate trans-
9 feree of any such initial transferee.
10 (E) RIGHTS OF TRANSFEREE OR OBLI-
11 GEE.—The Corporation may not recover under
12 subparagraph (D)(ii)—
13 (i) from a transferee that takes for
14 value, including satisfaction or securing of
15 a present or antecedent debt, in good faith,
16 and without knowledge of the violability of
17 the transfer avoided; or
18 (ii) any immediate or mediate good
19 faith transferee of such transferee.
20 (F) DEFENSES.—A transferee or obligee
21 from whom the Corporation seeks to recover a
22 transfer or avoid an obligation under subpara-
23 graphs (A), (B) or (C) shall have the same af-
24 firmative defenses and rights to liens on the
25 property transferred to the extent they would be

1 available to a transferee or obligee from whom
2 a trustee under title 11 seeks to recover a
3 transfer under sections 547, 548, and 549 of
4 title 11, United States Code.
5 (G) LIMITATIONS ON AVOIDING POWERS.—
6 The rights of the Corporation under subpara-
7 graphs (A), (B) or (C) are restricted to the
8 same extent as the rights of a trustee in bank-
9 ruptcy under section 546(b)(1) of the Bank-
10 ruptcy Code.
11 (H) PRESUMPTION OF INSOLVENCY.—For
12 purposes of subparagraph (B), the covered fi-
13 nancial company is presumed to have been in-
14 solvent on and during the 90 days immediately
15 preceding the date on which the Corporation is
16 appointed as receiver.
17 (I) RIGHTS UNDER THIS SUBSECTION.—
18 The rights of the Corporation as receiver for a
19 covered financial company under this subsection
20 shall be superior to any rights of a trustee or
21 any other party (other than any party which is
22 a Federal agency of a Federal Home Loan
23 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:

1 (C) the officers, directors, employees, fi-
2 nancial advisors, staff, working groups, and
3 agents and representatives of the Council (as
4 related to the agent's or representative's activi-
5 ties on behalf of the Council) at such reasonable
6 times as the Comptroller General may request.

Page 32, after line 12, insert the following:

7 (3) COPIES.—Comptroller General may make
8 and retain copies of such books, accounts, and other
9 records access to which is granted under this provi-
10 sion as the Comptroller General considers appro-
11 priate.

Page 732, after line 10, insert the following:

12 **SEC. 4111. OVERSIGHT BY GAO.**

13 (a) AUTHORITY.—The Comptroller General may
14 audit the programs, activities, receipts, expenditures, and
15 financial transactions of the Agency and of any agents and
16 representatives of the Agency as related to the agent's or
17 representative's activities on behalf of or under authority
18 of the Agency.

19 (b) ACCESS.—Notwithstanding any other provision of
20 law, the Comptroller General shall have access, upon re-

1 quest, to any information, data, schedules, books, ac-
2 counts, financial records, reports, files, electronic commu-
3 nications, or other papers, things, or property belonging
4 to or in use by the Agency, or any vehicles established
5 by the Agency under this Act, and to the directors, offi-
6 cers, employees, independent public accountants, financial
7 advisors, staff, working groups, and agents and represent-
8 atives of the Agency (as related to the agent's or rep-
9 resentative's activities on behalf of the Agency) or any ve-
10 hicle established by the Agency at such reasonable time
11 as the Comptroller General may request. The Comptroller
12 General may make and retain copies of such books, ac-
13 counts, and other records as the Comptroller General
14 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:

15 (3) ACCESS.—
16 (A) IN GENERAL.—For purposes of con-
17 ducting the study described in paragraph (1),
18 the Comptroller General shall have access, upon
19 request and with the consent of the Securities
20 and Exchange Commission, to any information,

1 data, schedules, books, accounts, financial
2 records, reports, files, electronic communica-
3 tions, or other papers, things, or property be-
4 longing to or in use by each nationally recog-
5 nized statistical rating organization, and to the
6 officers, directors, employees, independent pub-
7 lic accountants, financial advisors, staff and
8 agents and representatives of the organization
9 (as related to the agent's or representative's ac-
10 tivities on behalf of the organization) at such
11 reasonable times as the Comptroller General
12 may request. The Comptroller General may
13 make and retain copies of books, records, ac-
14 counts, and other records as the Comptroller
15 General deems appropriate.
16 (B) CONFIDENTIALITY.—The Comptroller
17 General may not disclose reasonably designated
18 proprietary, trade secret or business confiden-
19 tial information obtained from the organization
20 except that such information shall be disclosed
21 by the Comptroller General—
22 (i) to other Federal Government de-
23 partments, agencies, and officials for offi-
24 cial use upon request;

1 (ii) to committees of Congress upon
2 request; and
3 (iii) to a court in any judicial pro-
4 ceeding under court order.
5 Nothing in this provision shall be construed to
6 limit the requirements imposed by section 1905
7 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:

8 (3) determine how to reduce the burden of com-
9 plying with section 404(b) of the Sarbanes-Oxley Act
10 of 2002 for companies whose market capitalization
11 is less than $250,000,000 for the relevant reporting
12 period while maintaining investor protections for
13 such companies; and
14 (4) determine whether various methods of re-
15 ducing the compliance burden or a complete exemp-
16 tion for such companies (whose market capitalization
17 is less than $250,000,000 for the relevant reporting
18 period) from such compliance would encourage com-

1 panies to list on exchanges in the United States in
2 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 (3) OFFICE OF FINANCIAL PROTECTION FOR
4 OLDER AMERICANS.—
5 (A) ESTABLISHMENT.—Before the end of
6 the 180-day period beginning on the date of the
7 enactment of this title, the Director shall estab-
8 lish within the Agency the Office of Financial
9 Protection for Older Americans, whose func-

1 tions shall include activities designed to facili-
2 tate the financial literacy of individuals who
3 have attained the age of 62 years or more (in
4 this paragraph, referred to as "seniors") on
5 protection from unfair and deceptive practices
6 and on current and future financial choices, in-
7 cluding through the dissemination of materials
8 to seniors on such topics.
9 (B) DIRECTOR.—The Office of Financial
10 Protection for Older Americans shall be headed
11 by a director.
12 (C) DUTIES.—Such unit shall perform the
13 following duties:
14 (i) Develop goals for programs that
15 provide seniors financial literacy and coun-
16 seling, including programs that—
17 (I) help seniors recognize warn-
18 ing signs of unfair and deceptive prac-
19 tices, protect themselves from such
20 practices;
21 (II) provide one-on-one financial
22 counseling on issues including long-
23 term savings and later-life economic
24 security; and

1 (III) provide personal consumer
2 credit advocacy to respond to con-
3 sumer problems caused by unfair and
4 deceptive practices.
5 (ii) Monitor certifications or designa-
6 tions of financial advisors who advise sen-
7 iors and alert the Securities and Exchange
8 Commission and State regulators of certifi-
9 cations or designations that are identified
10 as unfair or deceptive.
11 (iii) Not later than 18 months after
12 the date of the establishment of the Office
13 of Financial Protection for Older Ameri-
14 cans, submit to Congress and the Securi-
15 ties and Exchange Commission rec-
16 ommendations of the best practices for any
17 legislative and regulatory—
18 (I) disseminating information re-
19 garding the legitimacy of certifications
20 of financial advisers who advise sen-
21 iors;
22 (II) methods in which a senior
23 can identify the financial advisor most
24 appropriate for the senior's needs; and

1 (III) methods in which a senior
2 can verify a financial advisor's creden-
3 tials.
4 (iv) Conduct research to identify best
5 practices and effective methods, tools, tech-
6 nology and strategies to educate and coun-
7 sel seniors about personal finance manage-
8 ment with a focus on—
9 (I) protecting themselves from
10 unfair and deceptive practices;
11 (II) long-term savings; and
12 (III) planning for retirement and
13 long-term care.
14 (v) Coordinate consumer protection
15 efforts of seniors with other Federal agen-
16 cies and State regulators, as appropriate,
17 to promote consistent, effective, and effi-
18 cient enforcement.
19 (vi) Work with community organiza-
20 tions, non-profit organizations, and other
21 entities that are involved with educating or
22 assisting seniors (including the National
23 Education and Resource Center on Women
24 and Retirement Planning).

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

1 (a) EXCLUSION FOR MERCHANTS, RETAILERS, AND
2 SELLERS OF NONFINANCIAL SERVICES.—
3 (1) IN GENERAL.—Notwithstanding any provi-
4 sion of this title (other than paragraph (4)) and sub-
5 ject to paragraph (2), the Director and the Agency
6 may not exercise any rulemaking, supervisory, en-
7 forcement or other authority, including authority to
8 order assessments, under this title with respect to—
9 (A) credit extended directly by a merchant,
10 retailer, or seller of nonfinancial goods or serv-
11 ices to a consumer, in a case in which the good
12 or service being provided is not itself a con-
13 sumer financial product or service, exclusively
14 for the purpose of enabling that consumer to
15 purchase such goods or services directly from
16 the merchant, retailer, or seller of financial
17 services; or
18 (B) collection of debt, directly by the mer-
19 chant, retailer, or seller of nonfinancial services,
20 arising from such credit extended. In the appli-
21 cation of this paragraph, the extension of credit
22 and the collection of debt described in subpara-
23 graphs (A) and (B), respectively, shall not be

1 considered a consumer financial product or
2 service.
3 (2) EXCEPTIONS FOR EXISTING AUTHORITY.—
4 The Director may exercise any rulemaking authority
5 regarding an extension of credit described in para-
6 graph (1)(A) or the collection of debt arising from
7 such extension, as may be authorized by the enumer-
8 ated consumer laws or any law or authority trans-
9 ferred under subtitle F or H.
10 (3) RULE OF CONSTRUCTION.—No provision of
11 this title shall be construed as modifying, limiting,
12 or superseding the authority of the Federal Trade
13 Commission or any agency other than the Agency
14 with respect to credit extended, or the collection of
15 debt arising from such extension, directly by a mer-
16 chant or retailer to a consumer exclusively for the
17 purpose of enabling that consumer to purchase
18 goods or services directly from the merchant or re-
19 tailer.
20 (4) EXCLUSION NOT APPLICABLE TO CERTAIN
21 CREDIT TRANSACTIONS.—Paragraph (1) shall not
22 apply to—
23 (A) any credit transaction, including the
24 collection of the debt arising from such exten-
25 sion, in which the merchant, retailer, or seller

1 of nonfinancial services assigns, sells, or other-
2 wise conveys such debt owed by the consumer
3 to another person; or
4 (B) any credit transaction—
5 (i) in which the credit provided sig-
6 nificantly exceeds the market value of the
7 product or service provided, and
8 (ii) with respect to which the Director
9 finds that the sale of the product or service
10 is done as a subterfuge so as to evade or
11 circumvent the provisions of this title.

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

12 (xi) Financial data processing by any
13 technological means, including providing
14 data processing, access to or use of data-
15 bases or facilities, or advice regarding
16 processing or archiving, if the data to be
17 processed, furnished, stored, or archived
18 are financial, banking, or economic, except
19 that it shall not be considered a financial
20 activity with respect to financial data proc-
21 essing—
22 (I) to the extent the person is
23 providing interactive computer service,

1 as defined in section 230 of the Com-
2 munications Act of 1934 (47 U.S.C.
3 230); or
4 (II) if the person—
5 (aa) unknowingly or inciden-
6 tally transmits, processes, or
7 stores financial data in a manner
8 that such data is undifferentiated
9 from other types of data that the
10 person transmits, processes, or
11 stores;
12 (bb) does not provide to any
13 consumer a consumer financial
14 product or service in connection
15 with or relating to in any manner
16 financial data processing; and
17 (cc) does not provide a ma-
18 terial service to any covered per-
19 son in connection with the provi-
20 sion of a consumer financial
21 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:

1 (6) examine the feasibility of SIPC providing
2 additional levels of coverage on an optional basis,
3 what those additional levels of coverage should be,
4 and the appropriate risked-based premium for pro-
5 viding additional coverage.

Page 1018, after line 25, insert the following:

6 **SEC. 4818. AMENDMENTS TO TRUTH IN LENDING ACT.**

7 (a) IN GENERAL.—Section 128(e) of the Truth in
8 Lending Act is amended—

9 (1) by striking paragraph (3) and inserting the
10 following new paragraph (3):

11 "(3) INSTITUTIONAL CERTIFICATION RE-
12 QUIRED.—(A) Except as provided in subparagraph
13 (B), before a creditor may issue any funds with re-
14 spect to an extension of credit described in para-
15 graph (1), the creditor shall obtain from the relevant
16 institution of higher education such institution's cer-
17 tification—

1 "(i) of the enrollment status of the bor-
2 rower;
3 "(ii) of the borrower's cost of attendance
4 at the institution as determined by the institu-
5 tion under part F of title IV of the Higher
6 Education Act of 1965;
7 "(iii) of the difference between the bor-
8 rower's cost of attendance and the borrower's
9 estimated financial assistance received under
10 title IV of the Higher Education Act of 1965
11 and other assistance known to the institution,
12 as applicable; and
13 "(iv) that the institution has—
14 "(I) informed the borrower—
15 "(aa) about the availability of,
16 and the borrower's potential eligibility
17 for, Federal financial assistance under
18 this title, including disclosing the
19 terms, conditions, and interest rates
20 of Federal student loans;
21 "(bb) of the borrower's ability to
22 select a private educational lender of
23 the borrower's choice;
24 "(cc) about the impact of a pro-
25 posed private education loan on the

1 borrowers' potential eligibility for
2 other financial assistance, including
3 Federal financial assistance under the
4 Higher Education Act of 1965; and
5 "(dd) about a borrower's right to
6 accept or reject a private education
7 loan within the 30-day period fol-
8 lowing a private educational lender's
9 approval of a borrower's application
10 and about a borrower's 3-day right to
11 cancel altogether;
12 "(II) determined whether the bor-
13 rower has applied for and exhausted the
14 Federal financial assistance available to
15 the borrower under the Higher Education
16 Act of 1965 and informed the borrower ac-
17 cordingly; and
18 "(III) counseled the borrower on the
19 borrower's financial aid options.
20 "(B) A creditor may issue funds with respect to
21 an extension of credit described in paragraph (1)
22 without obtaining from the relevant institution of
23 higher education such institution's certification if
24 such institution fails to provide such certification
25 within 21 calendar days or 15 business days, which-

1 ever comes first, of the creditor's request for such
2 certification.";
3 (2) by redesignating paragraphs (9), (10), and
4 (11) as paragraphs (10), (11), and (12), respec-
5 tively; and
6 (3) by inserting after paragraph (8) the fol-
7 lowing new paragraph (9):
8 "(9) PROVISION OF INFORMATION.—On or be-
9 fore the date a creditor issues any funds with re-
10 spect to an extension of credit described in para-
11 graph (1), the creditor shall notify the relevant insti-
12 tution of higher education, in writing, of the amount
13 of the extension of credit and the student on whose
14 behalf credit is extended. The form of such written
15 notification shall be subject to the regulations of the
16 Agency.".
17 (b) REGULATIONS.—
18 (1) DEADLINE FOR REGULATIONS.—Not later
19 than 365 days after the date of enactment of this
20 Act, the Agency shall issue regulations in final form
21 to implement paragraphs (3) and (9) of section
22 128(e) of the Truth in Lending Act, as amended by
23 subsection (a). Such regulations shall become effec-
24 tive not later than 6 months after their date of
25 issuance.

1 (2) EFFECTIVE DATE.—The regulations in ef-
2 fect pursuant to section 128(e) of the Truth in
3 Lending Act as of the date of the enactment of this
4 Act shall remain in effect until the effective date of
5 the regulations issued under paragraph (1).
6 (c) STUDY AND REPORT ON PRIVATE EDUCATION
7 LOANS AND PRIVATE EDUCATIONAL LENDERS.—
8 (1) REPORT.—Not later than 2 years after the
9 date of enactment of this Act, the Director and the
10 Secretary of Education, in consultation with the
11 Commissioners of the Federal Trade Commission,
12 and the Attorney General, shall submit a report to
13 the Committee on Financial Services and the Com-
14 mittee on Education and Labor of the House of
15 Representatives and the Committee on Banking,
16 Housing, and Urban Affairs and the Committee on
17 Health Education, Labor, and Pensions of the Sen-
18 ate on private education loans (as that term is de-
19 fined in section 140 of the Truth in Lending Act (15
20 U.S.C. 1650)) and private educational lenders (as
21 that term is defined in such section).
22 (2) CONTENT.—The report required by this
23 subsection shall examine, at a minimum, the fol-
24 lowing:

1 (A) the growth and changes of the private
2 education loan market in the United States;
3 (B) factors influencing such growth and
4 changes;
5 (C) the extent to which students and par-
6 ents of students rely on private education loans
7 to finance postsecondary education and the pri-
8 vate education loan indebtedness of borrowers,
9 (D) the characteristics of private education
10 loan borrowers, including the types of institu-
11 tions of higher education they attend, socio-
12 economic characteristics (including income and
13 education levels, racial characteristics, geo-
14 graphical background, age, and gender), what
15 other forms of financing borrowers use to pay
16 for education, whether they exhaust their fed-
17 eral loan options before taking out a private
18 loan, whether such borrowers are dependent or
19 independent students (as determined under part
20 F of title IV of the Higher Education Act of
21 1965) or parents of such students, whether
22 such borrowers are students enrolled in a pro-
23 gram leading to a certificate, license or creden-
24 tial other than a degree, an associates degree,
25 a baccalaureate degree, or a graduate or profes-

1 sional degree and, if practicable, employment
2 and repayment behaviors;
3 (E) the characteristics of private edu-
4 cational lenders, including whether such credi-
5 tors are for-profit, non-profit, or institutions of
6 higher education;
7 (F) the underwriting criteria used by pri-
8 vate educational lenders, including the use of
9 cohort default rate (as such term is defined in
10 section 435(m) of the Higher Education Act of
11 1965);
12 (G) the terms, conditions, and pricing of
13 private education loans;
14 (H) the consumer protections available to
15 private education loan borrowers, including the
16 effectiveness of existing disclosures and require-
17 ments and borrowers' awareness and under-
18 standing about terms and conditions of various
19 financial products;
20 (I) whether federal regulators and the pub-
21 lic have access to information sufficient to pro-
22 vide them with assurances that private edu-
23 cation loans are provided in accord with the
24 Nation's fair lending laws and that allows pub-

1 lic officials to determine lenders' compliance
2 with fair lending laws; and
3 (J) any statutory or legislative rec-
4 ommendations necessary to improve consumer
5 protections for private education loan borrowers
6 and to better enable federal regulators and the
7 public to ascertain private educational lender
8 compliance with fair lending laws.
9 (d) REPORT.— Not later than 18 months after the
10 issuance of regulations under subsection (b)(1), the Con-
11 sumer Financial Protection Agency and the Secretary of
12 Education shall jointly submit to Congress a report on the
13 compliance of institutions and private educational lenders
14 with the amendments made by this section. The report
15 shall include the degree to which specific institutions uti-
16 lize certifications in effectively encouraging the exhaustion
17 of Federal student loan eligibility and lowering student
18 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

1 present value analyses of a mortgage, based on the
2 Secretary's methodology for calculating such value,
3 that mortgagors can use to enter information re-
4 garding their own mortgages and that provides a de-
5 termination after entering such information regard-
6 ing a mortgage of whether such mortgage would be
7 accepted or rejected for modification under the Pro-
8 gram, using such methodology.

9 (2) DISCLOSURE.— Such Web site shall also
10 prominently disclose that each mortgage servicer
11 participating in such Program may use a method for
12 calculating net present value of a mortgage that is
13 different than the method used by such calculator.

14 (3) APPLICATION.— The Secretary shall make
15 a reasonable effort to include on such World Wide
16 Web site a method for homeowners to apply for a
17 mortgage modification under the Home Affordable
18 Modification Program.

19 (c) PUBLIC AVAILABILITY OF NPV METHODOLOGY,
20 COMPUTER MODEL, AND VARIABLES.—The Secretary
21 shall make publicly available, including by posting on a
22 World Wide Web site of the Secretary—

23 (1) the Secretary's methodology and computer
24 model, including all formulae used in such computer
25 model, used for calculating net present value of a

1 mortgage that is used by the calculator established
2 pursuant to subsection (b); and
3 (2) all variables used in such net present value
4 analysis.

Page 1068, after line 22, insert the following:

5 (c) REQUIREMENTS FOR LIABILITY.—Section 21D of
6 the Securities Exchange Act of 1934 (15 U.S.C. 78u–4)
7 is amended—
8 (1) by redesignating subsections (c) through (f)
9 as subsections (d) through (g), respectively; and
10 (2) by inserting after subsection (b) the fol-
11 lowing:
12 "(c) REQUIREMENTS FOR LIABILITY.—A purchaser
13 of a security given a rating by a nationally recognized sta-
14 tistical rating organization shall have the right to recover
15 for damages if the process of determining the credit rating
16 was—
17 "(1) grossly negligent, based on the facts and
18 circumstances at the time the rating was issued; and
19 "(2) a substantial factor in the economic loss
20 suffered by the investor.
21 No action shall be maintained to enforce any liability cre-
22 ated under this subsection unless brought within 2 years
23 after the discovery of the facts constituting the violation

1 and within 3 years after the initial issuance of the rat-
2 ing.".

Strike section 1109 and insert the following new section:

3 **SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.**

4 (a) IN GENERAL.—Upon the written determination
5 of the Council that a liquidity event exists that could de-
6 stabilize the financial system (which determination shall
7 be made upon a vote of not less than two-thirds of the
8 members of the Council then serving) and with the written
9 consent of the Secretary of the Treasury (after certifi-
10 cation by the President that an emergency exists), the
11 Corporation may create a widely-available program de-
12 signed to avoid or mitigate adverse effects on systemic eco-
13 nomic conditions or financial stability by guaranteeing ob-
14 ligations of solvent insured depository institutions or sol-
15 vent depository institution holding companies (including
16 any affiliates thereof), if necessary to prevent systemic fi-
17 nancial instability during times of severe economic dis-
18 tress, except that a guarantee of obligations under this
19 section may not include provision of equity in any form.
20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the issuance of

1 guarantees. The terms and conditions of any guarantees
2 issued shall be established by the Corporation with the ap-
3 proval of the Secretary of the Treasury and the Financial
4 Stability Oversight Council. Such terms and conditions
5 may include the Corporation requiring collateral as a con-
6 dition of any such guarantee.

7 (c) CAP FOR GUARANTEED AMOUNT.—

8 (1) IN GENERAL.—In connection with any pro-
9 gram established pursuant to subsection (a) and
10 subject to paragraph (2), the Corporation may not
11 have guaranteed debt outstanding at any time of
12 more than $500,000,000,000 (as indexed to reflect
13 growth in assets of insured depository institutions
14 and depository institution holding companies as de-
15 termined by the Corporation).

16 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
17 ITY.—If the Corporation, with the concurrence of
18 the Council and the Secretary (in consultation with
19 the President), determines that the Corporation
20 must guarantee debt in excess of $500,000,000,000
21 (as indexed pursuant to paragraph (1)) to prevent
22 systemic financial instability, the Corporation may
23 transmit to the Congress a request for authority to
24 guarantee debt in excess of $500,000,000,000 (as
25 indexed pursuant to paragraph (1)). Such request

1 shall be considered granted by Congress upon adop-
2 tion of a joint resolution approving such request.
3 Such joint resolution shall be considered in the Sen-
4 ate under expedited procedures.
5 (d) FUNDING.—
6 (1) ADMINISTRATIVE EXPENSES AND COST OF
7 GUARANTEES.—A program established pursuant to
8 this section shall require funding only for the pur-
9 poses of paying administrative expenses and for pay-
10 ing a guarantee in the event that a guaranteed loan
11 defaults.
12 (2) FEES AND OTHER CHARGES.—The Corpora-
13 tion shall charge fees or other charges to all partici-
14 pants in such program established pursuant to this
15 section to offset projected losses and administrative
16 expenses. To the extent that a program established
17 pursuant to this section has expenses or losses, the
18 program will be funded entirely through fees or
19 other charges assessed on participants in such pro-
20 gram.
21 (3) EXCESS FUNDS.—If at the conclusion of
22 such program there are any excess funds collected
23 from the fees associated with such program, the
24 funds will be deposited into the Systemic Dissolution
25 Fund established pursuant to section 1609(n).

1 (4) AUTHORITY OF CORPORATION.—For pur-
2 poses of conducting a program established pursuant
3 to this section, the Corporation—
4 (A) may borrow funds from the Secretary
5 of the Treasury, which shall be repaid in full
6 with interest through fees and charges paid by
7 participants in accordance with paragraph (2),
8 and there shall be available to the Corporation
9 amounts in the Treasury not otherwise appro-
10 priated, including for the payment of reasonable
11 administrative expenses;
12 (B) may not borrow funds from the De-
13 posit Insurance Fund established pursuant to
14 section 11(a)(4) of the Federal Deposit Insur-
15 ance Act; and
16 (C) may not borrow funds from the Sys-
17 temic Dissolution Fund established pursuant to
18 section 1609(n).
19 (5) BACK-UP SPECIAL ASSESSMENT.—To the
20 extent that the funds collected pursuant to para-
21 graph (2) are insufficient to cover any losses or ex-
22 penses (including monies borrowed pursuant to
23 paragraph (4)) arising from a program established
24 pursuant to this section, the Corporation shall im-

1 pose a special assessment solely on participants in
2 the program.
3 (e) PLAN FOR MAINTENANCE OR INCREASE OF
4 LENDING.—In connection with any application or request
5 to participate in such program authorized pursuant to this
6 section, a solvent entity seeking to participate in such pro-
7 gram shall be required to submit to the Corporation a plan
8 detailing how the use of such guaranteed funds will facili-
9 tate the increase or maintenance of such solvent com-
10 pany's level of lending to consumers or small businesses.
11 (f) SUNSET OF CORPORATION'S AUTHORITY.—The
12 Corporation's authority under subsections (a) and (d) and
13 the authority to borrow funds from the Treasury under
14 section 1609(o) shall expire on December 31, 2013.
15 (g) RULE OF CONSTRUCTION.—For purposes of this
16 section, a guarantee of deposits held by insured depository
17 institutions shall not be treated as a debt guarantee pro-
18 gram.
19 (h) DEFINITIONS.—For purposes of this section, the
20 following definitions apply:
21 (1) CORPORATION.—The term "Corporation"
22 means the Federal Deposit Insurance Corporation.
23 (2) DEPOSITORY INSTITUTION HOLDING COM-
24 PANY.—The term "depository institution holding
25 company" has the meaning given the term in section

1 3 of the Federal Deposit Insurance Act (12 U.S.C.
2 1813).
3 (3) INSURED DEPOSITORY INSTITUTION.—The
4 term "insured depository institution" has the mean-
5 ing given the term in section 3 of the Federal De-
6 posit Insurance Act (12 U.S.C. 1813).
7 (4) SOLVENT.—The term "solvent" means as-
8 sets are more than the obligations to creditors.

Page 110, after line 7, insert the following new section (and redesignate the subsequent sections accordingly):

9 **SEC. 1110. ADDITIONAL RELATED AMENDMENTS.**
10 (a) FEDERAL DEPOSIT INSURANCE ACT RELATED
11 AMENDMENTS.—
12 (1) SUSPENSION OF PARALLEL FEDERAL DE-
13 POSIT INSURANCE ACT AUTHORITY.—Effective upon
14 the date of the enactment of this section through
15 December 31, 2013, the Corporation may not exer-
16 cise its authority under section 13(c)(4)(G)(i) of the
17 Federal Deposit Insurance Act (12 U.S.C.
18 1823(c)(4)(G)(i)) to establish any widely-available
19 debt guarantee program for which section 1109
20 would provide authority.
21 (2) FEDERAL DEPOSIT INSURANCE ACT AU-
22 THORITY PRESERVED.—Effective December 31,

1 2013, the Corporation shall have the same authority
2 pursuant to section 13(c)(4)(G)(i) of the Federal
3 Deposit Insurance Act as the Corporation had prior
4 to the date of enactment of this Act.
5 (b) EFFECT OF DEFAULT ON AN FDIC GUAR-
6 ANTEE.—If an insured depository institution or depository
7 institution holding company participating in a program
8 under section 1109 or any participant in a debt guarantee
9 program established pursuant to section 13(c)(4)(G)(i) of
10 the Federal Deposit Insurance Act defaults on any obliga-
11 tion guaranteed by the Corporation after the date of en-
12 actment of this Act, the Corporation may—
13 (1) appoint itself as receiver for the insured de-
14 pository institution that defaults;
15 (2) with respect to any other participating com-
16 pany that is not an insured depository institution
17 that defaults—
18 (A) require consideration of whether a de-
19 termination shall be made as provided in sec-
20 tion 1603 to resolve the company under subtitle
21 G; and
22 (B) if the Corporation is not appointed re-
23 ceiver pursuant to subtitle G within 30 days of
24 the date of default, require the company to file
25 a petition for bankruptcy under section 301 of

1 title 11, United States Code, or file a petition
2 for bankruptcy against the company under sec-
3 tion 303 of title 11, United States Code.
4 (c) AUTHORITY TO FILE INVOLUNTARY PETITION
5 FOR BANKRUPTCY.—Section 303 of title 11, United
6 States Code, is amended by adding at the end the fol-
7 lowing:
8 "(m) Notwithstanding subsections (a) and (b), an in-
9 voluntary case may be commenced by the Federal Deposit
10 Insurance Corporation against a depository institution
11 holding company as defined in section 3 of the Federal
12 Deposit Insurance Act (12 U.S.C. 1813) or other company
13 participating in a guarantee program established by the
14 Corporation on the ground that the company has defaulted
15 on a debt or obligation guaranteed by the Corporation.".
16 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON
17 DEBT GUARANTEED PURSUANT TO SECTION 1109.—Sec-
18 tion 507(a)(9) of title 11, United States Code, is amended
19 by inserting before the period at the end the following:
20 "and allowed unsecured claims based upon any debt to
21 the Federal Deposit Insurance Corporation that arose
22 prior to the commencement of the case under this title,
23 as a result of the debtor's default on a guarantee provided
24 by the Corporation pursuant to section 1109 of the Finan-
25 cial Stability Improvement Act of 2009 or the Federal De-

1 posit Insurance Act, under a program established by the
2 Corporation after the date of enactment of the Financial
3 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:

4 (a) IN GENERAL.—In connection with any payment,
5 credit extension, or guarantee or any commitment under
6 section 1109 or 1604, the Corporation may obtain from
7 the insured depository institution, depository institution
8 holding company (including any affiliates thereof), or cov-
9 ered 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:

1 **SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION**
2 **LIMITATIONS.**

3 At any time that the Corporation has borrowed from
4 the Treasury pursuant to section 1609(o) to resolve a cov-
5 ered financial company, the Corporation shall apply the
6 executive compensation limits under section 111 of the
7 Emergency Economic Stabilization Act of 2008 to such
8 company for so long as such company is in receivership.

Page 436, after line 11, insert the following new section:

9 **SEC. 1615. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT IN-**
10 **SURANCE ACT.**

11 Section 11(d)(11)(A) of the Federal Deposit Insur-
12 ance Act (12 U.S.C. 1821(d)(11)(A)) is amended—
13 (1) by redesignating clauses (iii) through (v) as
14 clauses (iv) through (vi), respectively; and
15 (2) by inserting after clause (ii) the following
16 new clause (iii):
17 "(iii) Any obligation of the institution
18 owed to the Corporation as a result of the
19 institution's default on a Corporation-guar-
20 anteed debt.".

Page 825, after line 12, insert the following new section:

1 **SEC. 4313. REGULATION OF PERSON-TO-PERSON LENDING.**

2 (a) SCOPE OF EXEMPTION FROM FEDERAL SECURI-
3 TIES REGULATION.—Section 3(a) of the Securities Act of
4 1933 (15 U.S.C. 77c(a)) is amended by adding at the end
5 the following new paragraph:

6 "(15) PERSON-TO-PERSON LENDING.—

7 "(A) IN GENERAL.—Any consumer loan,
8 and any note representing a whole or fractional
9 interest in any such loan, funded or sold
10 through a person-to-person lending platform.

11 "(B) DEFINITIONS.— For purposes of this
12 paragraph:

13 "(i) CONSUMER LOAN.—The term
14 'consumer loan' means a loan made to a
15 natural person, the proceeds of which are
16 intended primarily for personal, family,
17 educational, household, or business use.

18 "(ii) PERSON-TO-PERSON LENDING
19 PLATFORM.—

20 "(I) IN GENERAL.—The term
21 'person-to-person lending platform'
22 means an Internet website, the pri-
23 mary purpose of which is to provide a
24 transaction platform for the funding
25 or sale of individual consumer loans,
26 or the sale of notes representing whole

1 or fractional interests in individual
2 consumer loans, by matching natural
3 persons who wish to obtain such loans
4 with persons who wish to fund them,
5 or by matching persons who wish to
6 sell such loans or notes with persons
7 who wish to purchase them.
8 "(II) PROHIBITION ON MULTIPLE
9 LOANS IN A SINGLE TRANSACTION.—
10 The term 'person-to-person lending
11 platform' does not include any plat-
12 form on which multiple loans may be
13 funded or sold in a single transaction,
14 or on which a note representing an in-
15 terest in multiple loans or other debt
16 obligations may be sold.".
17 (b) REGULATION BY THE AGENCY.—
18 (1) IN GENERAL.—Primary jurisdiction for the
19 regulation of the lending activities of person-to-per-
20 son lending and person-to-person lending platforms
21 is hereby vested in the Agency.
22 (2) INTERIM REQUIREMENTS.—Until the Direc-
23 tor issues and adopts disclosure requirements with
24 respect to the sale of consumer loans, or notes rep-
25 resenting whole or fractional interests therein, on

1 person-to-person lending platforms, a person-to-per-
2 son lending platform that registers the offer and sale
3 of any such notes under the Securities Act of 1933
4 shall, with respect to such registered offer and sale,
5 provide the disclosure required under the Securities
6 Act of 1933 to be contained in the registration
7 statement and prospectus and provide such disclo-
8 sure required in any periodic reports required to be
9 filed by such person-to-person lender pursuant to
10 section 13 or section 15(d) of the Securities Ex-
11 change Act of 1934.

12 (3) DEFINITIONS.—For purposes of this sub-
13 section, the terms "consumer loan", "person-to-per-
14 son lending platform", "prospectus", and "registra-
15 tion statement" shall have the meaning given such
16 term under the Securities Act of 1933.

17 (c) RULEMAKING.—The Director may prescribe such
18 regulations and issue such orders as the Director con-
19 siders necessary or appropriate to implement the provi-
20 sions of this section and to provide borrower protection,
21 lender protection, consumer choice, and expanded con-
22 sumer access to fair and reasonable credit choices.

23 (d) EFFECTIVE DATE.—Notwithstanding section
24 4310, this section shall take effect on the date of the en-
25 actment 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:

1 (vi) the nature, range, and size of
2 variations between the credit scores sold to
3 creditors and those sold to consumers by
4 consumer reporting agencies that compile
5 and maintain files on consumers on a na-
6 tionwide basis (as defined in section
7 603(p) of the Fair Credit Reporting Act;
8 15 U.S.C. 1681a(p)), and whether such
9 variations disadvantage consumers;

Page 788, after line 10, insert the following:

10 (3) CONSIDER AS UNFAIR CERTAIN PRACTICES
11 WITH REGARD TO THE PROVISION OF CREDIT
12 SCORES.—Subject to regulations prescribed by the
13 Director, it shall be considered unfair for any con-
14 sumer reporting agency that compiles and maintains
15 files on consumers on a nationwide basis (as defined
16 in section 603(p) of the Fair Credit Reporting Act;
17 15 U.S.C. 1681a(p)) to make available for purchase
18 by creditors any credit score for a consumer that is
19 not also available for purchase by that consumer at

1 the same price as other credit scores sold to con-
2 sumers 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 (3) EXCEPTION.—Notwithstanding paragraph
4 (1), an attorney's activities related to assisting an-
5 other person in preventing a foreclosure shall be
6 subject to this title except to the extent such activi-
7 ties constitute, or are incidental to, the provision of
8 legal services to a client of the attorney.

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

9 (l) EXCLUSION FOR ACTIVITIES RELATING TO CHAR-
10 ITABLE CONTRIBUTIONS.—
11 (1) The Director and the Agency may not exer-
12 cise any rulemaking, supervisory, enforcement, or

1 other authority, including authority to order assess-
2 ments or penalties, over any activities related to the
3 solicitation or making of voluntary contributions to
4 or through a tax-exempt organization as recognized
5 by the Internal Revenue Service, by any agent, vol-
6 unteer or representative of such organizations to the
7 extent the organization, agent, volunteer or rep-
8 resentative thereof is soliciting or providing advice,
9 information, education or instruction to donor(s) or
10 potential donor(s) relating to a contribution to or
11 through the organization.
12 (2) This exclusion shall not apply to other ac-
13 tivities not described in the paragraph above and are
14 financial activities as described in any subparagraph
15 of section 4002(19), or otherwise subject to any of
16 the enumerated consumer laws, or the authorities
17 transferred under subtitle F or H.

AMENDMENT TO H.R. 4173

OFFERED BY _____

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

96

AMENDMENT TO H.R. 4173

OFFERED BY MR. SESSIONS OF TEXAS

Page 1068, strike lines 8 through 22.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERSON, COLLIN OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

REV 115

AMENDMENT TO H.R. 4173

OFFERED BY MR. PETERSON OF MINNESOTA

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,

1 security-based swap dealers, major security-based
2 swap participants, security-based swap repositories,
3 persons associated with a security-based swap dealer
4 or major security-based swap participant, eligible
5 contract participants with regard to security-based
6 swaps, or swap execution facilities pursuant to sub-
7 title B, the Securities and Exchange Commission
8 shall consult with the Commodity Futures Trading
9 Commission and the Prudential Regulators.
10 (3) In developing and promulgating rules or or-
11 ders pursuant to this subsection, the Commodity Fu-
12 tures Trading Commission and the Securities and
13 Exchange Commission shall consider each other's
14 views and the views of the Prudential Regulators.
15 (4) In adopting a rule or order described in
16 paragraph (1) or (2), the Commodity Futures Trad-
17 ing Commission and the Securities and Exchange
18 Commission shall treat functionally or economically
19 similar products or entities similarly.
20 (5) Paragraph (4) shall not be construed to re-
21 quire the Commodity Futures Trading Commission
22 or the Securities Exchange Commission to adopt a
23 rule or order that treats functionally or economically
24 similar products or entities identically.
25 (b) LIMITATION.—

1 (1) CFTC.—Nothing in this title, unless spe-
2 cifically provided, shall be construed to confer juris-
3 diction on the Commodity Futures Trading Commis-
4 sion to issue a rule, regulation, or order providing
5 for oversight or regulation of—
6 (A) security-based swaps; or
7 (B) with regard to their activities or func-
8 tions concerning security-based swaps—
9 (i) security-based swap dealers;
10 (ii) major security-based swap partici-
11 pants;
12 (iii) security-based swap repositories;
13 (iv) persons associated with a secu-
14 rity-based swap dealer or major security-
15 based swap participant;
16 (v) eligible contract participants with
17 respect to security-based swaps; or
18 (vi) swap execution facilities.
19 (2) SEC.—Nothing in this title, unless specifi-
20 cally provided, shall be construed to confer jurisdic-
21 tion on the Securities and Exchange Commission to
22 issue a rule, regulation, or order providing for over-
23 sight or regulation of—
24 (A) swaps; or

1 (B) with regard to their activities or func-
2 tions concerning swaps—
3 (i) swap dealers;
4 (ii) major swap participants;
5 (iii) swap repositories;
6 (iv) persons associated with a swap
7 dealer or major swap participant;
8 (v) eligible contract participants with
9 respect to swaps; or
10 (vi) swap execution facilities.
11 (c) OBJECTION TO COMMISSION REGULATION.—
12 (1) FILING OF PETITION FOR REVIEW.—If ei-
13 ther Commission referred to in this section believes
14 that a final rule, regulation, or order of the other
15 such Commission conflicts with subsection (a)(4) or
16 (b), then the complaining Commission may obtain
17 review thereof in the United States Court of Appeals
18 for the District of Columbia Circuit by filing in the
19 court, not later than 60 days after the date of publi-
20 cation of the final rule, regulation, or order, a writ-
21 ten petition requesting that the rule, regulation, or
22 order be set aside. Any such proceeding shall be ex-
23 pedited by the Court of Appeals.
24 (2) TRANSMITTAL OF PETITION AND
25 RECORD.—A copy of a petition described in para-

1 graph (1) shall be transmitted not later than 1 busi-
2 ness day after filing by the complaining Commission
3 to the Secretary of the responding Commission. On
4 receipt of the petition, the responding Commission
5 shall file with the court a copy of the rule, regula-
6 tion, or order under review and any documents re-
7 ferred to therein, and any other materials prescribed
8 by the court.

9 (3) STANDARD OF REVIEW.—The court, giving
10 deference to the views of neither Commission, shall
11 determine to affirm or set aside a rule, regulation,
12 or order of the responding Commission under this
13 subsection, based on the determination of the court,
14 as to whether the rule, regulation, or order is in con-
15 flict with subsection (a)(4) or (b), as applicable.

16 (4) JUDICIAL STAY.—The filing of a petition by
17 the complaining Commission pursuant to paragraph
18 (1) shall operate as a stay of the rule, regulation, or
19 order, until the date on which the determination of
20 the court is final (including any appeal of the deter-
21 mination).

22 (d) DEFINITIONS.—In this section, the terms ''Pru-
23 dential Regulators'', ''swap'', ''swap dealer'', ''major swap
24 participant'', ''swap repository'', ''person associated with
25 a swap dealer or major swap participant'', ''eligible con-

1 tract participant", "swap execution facility", "security-
2 based swap", "security-based swap dealer", "major secu-
3 rity-based swap participant", "security-based swap reposi-
4 tory", and "person associated with a security-based swap
5 dealer or major security-based swap participant" shall
6 have the meanings provided, respectively, in the Com-
7 modity Exchange Act, including any modification of the
8 meanings under section 3101(b) of this Act.

9 (e)(1) Notwithstanding subsections (b) and (c), the
10 Commodity Futures Trading Commission and the Securi-
11 ties Exchange Commission shall jointly adopt rules to—

12 (A) define the terms "security-based swap
13 agreement" in section 3(a)(76) of the Securities Ex-
14 change Act of 1934 and "swap" in section
15 1a(35)(A)(v) of the Commodity Exchange Act;

16 (B) require the maintenance of records of all
17 activities related to transactions defined in subpara-
18 graph (A) that are not cleared; and

19 (C) make available to the Securities and Ex-
20 change Commission information relating to trans-
21 actions defined in subparagraph (A) that are
22 uncleared.

23 (2) In the event that the Commodity Futures Trading
24 Commission and the Securities Exchange Commission fail
25 to jointly prescribe rules pursuant to paragraph (1) in a

1 timely manner, at the request of either Commission, the
2 Financial Services Oversight Council shall resolve the dis-
3 pute—
4 (A) within a reasonable time after receiving the
5 request;
6 (B) after consideration of relevant information
7 provided by each Commission; and
8 (C) by agreeing with one of the Commissions
9 regarding the entirety of the matter or by deter-
10 mining a compromise position.

11 **SEC. 3003. INTERNATIONAL HARMONIZATION.**

12 (a) In order to promote effective and consistent global
13 regulation of contracts of sale of swaps and security-based
14 swaps, the Commodity Futures Trading Commission, the
15 Securities and Exchange Commission, and the Prudential
16 Regulators (as defined in section 1a(42) of the Commodity
17 Exchange Act), as appropriate, shall consult and coordi-
18 nate with foreign regulatory authorities on the establish-
19 ment of consistent international standards with respect to
20 the regulation of contracts of sale of swaps and security-
21 based swaps, and may agree to such information-sharing
22 arrangements as may be deemed to be necessary or appro-
23 priate in the public interest or for the protection of inves-
24 tors, swap counterparties, and security-based swap
25 counterparties.

1 (b) In order to promote effective and consistent global
2 regulation of contracts of sale of a commodity for future
3 delivery, the Commodity Futures Trading Commission
4 shall consult and coordinate with foreign regulatory au-
5 thorities on the establishment of consistent international
6 standards with respect to the regulation of contracts of
7 sale of a commodity for future delivery, and may agree
8 to such information-sharing arrangements as may be
9 deemed necessary or appropriate in the public interest for
10 the protection users of contracts of sale of a commodity
11 for future delivery.

12 **SEC. 3004. PROHIBITION AGAINST GOVERNMENT ASSIST-**
13 **ANCE.**

14 (a) IN GENERAL.—No provision of this title shall be
15 construed to authorize Federal assistance to support clear-
16 ing operations or liquidation of a derivatives clearing orga-
17 nization described in the Commodity Exchange Act or a
18 clearing agency described in the Securities Exchange Act
19 of 1934, except where explicitly authorized by an Act of
20 Congress.

21 (b) DEFINITION.—For the purposes of this section,
22 the term "Federal assistance" means the use of public
23 funds for the purposes of—

1 (1) making loans to, or purchasing any debt ob-
2 ligation of, a derivatives clearing organization, a
3 clearing agency, or a subsidiary of either;
4 (2) purchasing assets of a derivatives clearing
5 organization, a clearing agency, or a subsidiary of ei-
6 ther;
7 (3) assuming or guaranteeing the obligations of
8 a derivatives clearing organization, a clearing agen-
9 cy, or a subsidiary of either; or
10 (4) acquiring any type of equity interest or se-
11 curity of a derivatives clearing organization, a clear-
12 ing agency, or a subsidiary of either.
13 **SEC. 3005. STUDIES.**
14 (a) STUDY ON EFFECTS OF POSITION LIMITS ON
15 TRADING ON EXCHANGES IN THE UNITED STATES.—
16 (1) STUDY.—The Commodity Futures Trading
17 Commission, in consultation with each entity that is
18 a designated contract market under the Commodity
19 Exchange Act, shall conduct a study of the effects
20 (if any) of the position limits imposed pursuant to
21 the other provisions of this titleon excessive specula-
22 tion and on the movement of transactions from ex-
23 changes in the United States to trading venues out-
24 side the United States.

1 (2) REPORT TO THE CONGRESS.—Within 12
2 months after the imposition of position limits pursu-
3 ant to the other provisions of this title, the Com-
4 modity Futures Trading Commission, in consultation
5 with each entity that is a designated contract mar-
6 ket under the Commodity Exchange Act, shall sub-
7 mit to the Congress a report on the matters de-
8 scribed in paragraph (1).
9 (3) Within 30 legislative days after the submis-
10 sion to the Congress of the report described in para-
11 graph (2), the Committee on Agriculture of the
12 House of Representatives shall hold a hearing exam-
13 ining the findings of the report.
14 (4) In addition to the study required in para-
15 graph (1), the Chairman of the Commodity Futures
16 Trading Commission shall prepare and submit to the
17 Congress biennial reports on the growth or decline
18 of the derivatives markets in the United States and
19 abroad, which shall include assessments of the
20 causes of any such growth or decline, the effective-
21 ness of regulatory regimes in managing systemic
22 risk, a comparison of the costs of compliance at the
23 time of the report for market participants subject to
24 regulation by the United States with the costs of
25 compliance in December 2008 for the market par-

1 ticipants, and the quality of the available data. In
2 preparing the report, the Chairman shall solicit the
3 views of, consult with, and address the concerns
4 raised by, market participants, regulators, legisla-
5 tors, and other interested parties.

6 (b) STUDY ON FEASIBILITY OF REQUIRING USE OF
7 STANDARDIZED ALGORITHMIC DESCRIPTIONS FOR FI-
8 NANCIAL DERIVATIVES.—

9 (1) IN GENERAL.—The Securities and Ex-
10 change Commission and the Commodity Futures
11 Trading Commission shall conduct a joint study of
12 the feasibility of requiring the derivatives industry to
13 adopt standardized computer-readable algorithmic
14 descriptions which may be used to describe complex
15 and standardized financial derivatives.

16 (2) GOALS.—The algorithmic descriptions de-
17 fined in the study shall be designed to facilitate com-
18 puterized analysis of individual derivative contracts
19 and to calculate net exposures to complex deriva-
20 tives. The algorithmic descriptions shall be optimized
21 for simultaneous use by:

22 (A) commercial users and traders of de-
23 rivatives;

24 (B) derivative clearing houses, exchanges
25 and electronic trading platforms;

1 (C) trade repositories and regulator inves-
2 tigations of market activities; and
3 (D) systemic risk regulators.
4 The study will also examine the extent to which the
5 algorithmic description, together with standardized
6 and extensible legal definitions, may serve as the
7 binding legal definition of derivative contracts. The
8 study will examine the logistics of possible imple-
9 mentations of standardized algorithmic descriptions
10 for derivatives contracts. The study shall be limited
11 to electronic formats for exchange of derivative con-
12 tract descriptions and will not contemplate disclo-
13 sure of proprietary valuation models.
14 (3) INTERNATIONAL COORDINATION.—In con-
15 ducting the study, the Securities and Exchange
16 Commission and the Commodity Futures Trading
17 Commission shall coordinate the study with inter-
18 national financial institutions and regulators as ap-
19 propriate and practical.
20 (4) REPORT.—Within 8 months after the date
21 of the enactment of this Act, the Securities and Ex-
22 change Commission and the Commodity Futures
23 Trading Commission shall jointly submit to the
24 Committees on Agriculture and on Financial Serv-
25 ices of the House of Representatives and the Com-

1 mittees on Agriculture, Nutrition, and Forestry and
2 on Banking, Housing, and Urban Affairs of the Sen-
3 ate a written report which contains the results of the
4 study required by paragraphs (1) through (3).
5 (c) STUDY OF DESIRABILITY AND FEASIBILITY OF
6 ESTABLISHING SINGLE REGULATOR FOR ALL TRANS-
7 ACTIONS INVOLVING FINANCIAL DERIVATIVES.—
8 (1) IN GENERAL.—The Secretary of the Treas-
9 ury, the Commodity Futures Trading Commission,
10 and the Securities and Exchange Commission shall
11 conduct a joint study of the desirability and feasi-
12 bility of establishing, by January 1, 2012, a single
13 regulator for all transactions involving financial de-
14 rivatives.
15 (2) REPORT TO THE CONGRESS.—Not later
16 than December 1, 2010, Secretary of the Treasury,
17 the Commodity Futures Trading Commission, and
18 the Securities and Exchange Commission shall joint-
19 ly submit to the Committees on Agriculture and on
20 Financial Services of the House of Representatives
21 and the Committees on Agriculture, Nutrition, and
22 Forestry and on Banking, Housing, and Urban Af-
23 fairs of the Senate a written report that contains the
24 results of the study required by paragraph (1).

1 **SEC. 3006. RECOMMENDATIONS FOR CHANGES TO INSOL-**
2 **VENCY LAWS.**

3 Not later than 180 days after the date of the enact-
4 ment of this Act, the Securities and Exchange Commis-
5 sion, the Commodity Futures Trading Commission, and
6 the Prudential Regulators (as defined in section 1a of the
7 Commodity Exchange Act, as amended by section 3111
8 of this Act) shall transmit to Congress recommendations
9 for legislative changes to the Federal insolvency laws—
10 (1) in order to enhance the legal certainty with
11 respect to swap participants clearing non-proprietary
12 swap positions with a swap clearinghouse, includ-
13 ing—
14 (A) customer rights to recover margin de-
15 posits or custodial property held at or through
16 an insolvent swap clearinghouse, or clearing
17 participant; and
18 (B) the enforceability of clearing rules re-
19 lating to the portability of customer swap posi-
20 tions (and associated margin) upon the insol-
21 vency of a clearing participant;
22 (2) to clarify and harmonize the insolvency law
23 framework applicable to entities that are both com-
24 modity brokers (as defined in section 101(6) of title
25 11, United States Code) and registered brokers or

1 dealers (as defined in section 3(a) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78c(a))); and
3 (3) to facilitate the portfolio margining of secu-
4 rities and commodity futures and options positions
5 held through entities that are both futures commis-
6 sion merchants (as defined in section 1a of the Com-
7 modity Exchange Act) and registered brokers or
8 dealers (as defined in section 3 of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78c(a))).

10 **SEC. 3007. ABUSIVE SWAPS.**

11 The Commodity Futures Trading Commission and
12 the Securities and Exchange Commission may, by rule or
13 order, jointly collect information as may be necessary con-
14 cerning the markets for any types of swap (as defined in
15 section 1a(35) of the Commodity Exchange Act) or secu-
16 rity-based swap (as defined in section 1a(38) of such Act)
17 and jointly issue a report with respect to any types of
18 swaps or security-based swaps which the Commodity Fu-
19 tures Trading Commission and the Securities and Ex-
20 change Commission find are detrimental to the stability
21 of a financial market or of participants in a financial mar-
22 ket.

1 **SEC. 3008. AUTHORITY TO PROHIBIT PARTICIPATION IN**
2 **SWAP ACTIVITIES.**

3 If the Commodity Futures Trading Commission or
4 the Securities and Exchange Commission determines that
5 the regulation of swaps or security-based swaps markets
6 in a foreign country undermines the stability of the United
7 States financial system, either Commission, in consulta-
8 tion with the Secretary of the Treasury, may prohibit an
9 entity domiciled in that country from participating in the
10 United States in any swap or security-based swap activi-
11 ties.

12 **SEC. 3009. MEMORANDUM.**

13 (a)(1) The Commodity Futures Trading Commission
14 and the Federal Energy Regulatory Commission shall, not
15 later than 180 days after the date of the enactment of
16 this section, negotiate a memorandum of understanding
17 to establish procedures for—

18 (A) applying their respective authorities in a
19 manner so as to ensure effective and efficient regula-
20 tion in the public interest,

21 (B) resolving conflicts concerning overlapping
22 jurisdiction between the two agencies, and

23 (C) avoiding, to the extent possible, conflicting
24 or duplicative regulation.

1 (2) Such memorandum and any subsequent amend-
2 ments to the memorandum shall be promptly submitted
3 to the appropriate committees of Congress.
4 (b) The Commodity Futures Trading Commission
5 and the Federal Energy Regulatory Commission shall, not
6 later than 180 days after the date of the enactment of
7 this section, negotiate a memorandum of understanding
8 to share information that may be requested where either
9 Commission is conducting an investigation into potential
10 manipulation, fraud, or market power abuse in markets
11 subject to such Commission's regulation or oversight.
12 Shared information shall remain subject to the same re-
13 strictions on disclosure applicable to the Commission ini-
14 tially holding the information.

15 **Subtitle A—Regulation of Swap**
16 **Markets**

17 **SEC. 3101. DEFINITIONS.**

18 (a) AMENDMENTS TO DEFINITIONS IN THE COM-
19 MODITY EXCHANGE ACT.—Section 1a of the Commodity
20 Exchange Act (7 U.S.C. 1a) is amended—
21 (1) in paragraph (12)(A)—
22 (A) in clause (vii)(III), by striking
23 "$25,000,000" and inserting "$50,000,000";
24 and

1 (B) in clause (xi), by striking "total assets
2 in an amount" and inserting "amounts invested
3 on a discretionary basis";
4 (2) in paragraph (29)—
5 (A) in subparagraph (D), by striking
6 "and";
7 (B) by redesignating subparagraph (E) as
8 subparagraph (G); and
9 (C) by inserting after subparagraph (D)
10 the following:
11 "(E) a swap execution facility registered
12 under section 5h;
13 "(F) a swap repository; and"; and
14 (3) by adding at the end the following:
15 "(35) SWAP.—
16 "(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term 'swap' means any
18 agreement, contract, or transaction that—
19 "(i) is a put, call, cap, floor, collar, or
20 similar option of any kind for the purchase
21 or sale of, or based on the value of, 1 or
22 more interest or other rates, currencies,
23 commodities, securities, instruments of in-
24 debtedness, indices, quantitative measures,

1 or other financial or economic interests or
2 property of any kind;
3 "(ii) provides for any purchase, sale,
4 payment, or delivery (other than a dividend
5 on an equity security) that is dependent on
6 the occurrence, non-occurrence, or the ex-
7 tent of the occurrence of an event or con-
8 tingency associated with a potential finan-
9 cial, economic, or commercial consequence;
10 "(iii) provides on an executory basis
11 for the exchange, on a fixed or contingent
12 basis, of 1 or more payments based on the
13 value or level of 1 or more interest or other
14 rates, currencies, commodities, securities,
15 instruments of indebtedness, indices, quan-
16 titative measures, or other financial or eco-
17 nomic interests or property of any kind, or
18 any interest therein or based on the value
19 thereof, and that transfers, as between the
20 parties to the transaction, in whole or in
21 part, the financial risk associated with a
22 future change in any such value or level
23 without also conveying a current or future
24 direct or indirect ownership interest in an
25 asset (including any enterprise or invest-

1 ment pool) or liability that incorporates the
2 financial risk so transferred, and includes
3 any agreement, contract, or transaction
4 commonly known as an interest rate swap,
5 a rate floor, rate cap, rate collar, cross-cur-
6 rency rate swap, basis swap, currency
7 swap, total return swap, equity index swap,
8 equity swap, debt index swap, debt swap,
9 credit spread, credit default swap, credit
10 swap, weather swap, energy swap, metal
11 swap, agricultural swap, emissions swap,
12 or commodity swap;
13 "(iv) is, or in the future becomes,
14 commonly known to the trade as a swap;
15 "(v) meets the definition of 'swap
16 agreement' as defined in section 206A of
17 the Gramm-Leach-Bliley Act of which a
18 material term of which is based on the
19 price, yield, value, or volatility of any secu-
20 rity or any group or index of securities, or
21 any interest therein; or
22 "(vi) is any combination or permuta-
23 tion of, or option on, any agreement, con-
24 tract, or transaction described in any of
25 clauses (i) through (v).

1 "(B) EXCLUSIONS.—The term 'swap' does
2 not include—
3 "(i) any contract of sale of a com-
4 modity for future delivery (or any option
5 on such a contract) or security futures
6 product traded on or subject to the rules
7 of any board of trade designated as a con-
8 tract market under section 5 or 5f;
9 "(ii) any sale of a nonfinancial com-
10 modity or security for deferred shipment or
11 delivery, so long as the transaction is in-
12 tended to be physically settled;
13 "(iii) any put, call, straddle, option, or
14 privilege on any security, certificate of de-
15 posit, or group or index of securities, in-
16 cluding any interest therein or based on
17 the value thereof, that is subject to the Se-
18 curities Act of 1933 (15 U.S.C. 77a et
19 seq.) and the Securities Exchange Act of
20 1934 (15 U.S.C. 78a et seq.);
21 "(iv) any put, call, straddle, option, or
22 privilege relating to foreign currency en-
23 tered into on a national securities exchange
24 registered pursuant to section 6(a) of the

1 Securities Exchange Act of 1934 (15
2 U.S.C. 78f(a));
3 "(v) any agreement, contract, or
4 transaction providing for the purchase or
5 sale of 1 or more securities on a fixed basis
6 that is subject to the Securities Act of
7 1933 (15 U.S.C. 77a et seq.) and the Se-
8 curities Exchange Act of 1934 (15 U.S.C.
9 78a et seq);
10 "(vi) any agreement, contract, or
11 transaction providing for the purchase or
12 sale of 1 or more securities on a contingent
13 basis that is subject to the Securities Act
14 of 1933 (15 U.S.C. 77a et seq) and the
15 Securities Exchange Act of 1934 (15
16 U.S.C. 78a et seq.), unless the agreement,
17 contract, or transaction predicates the pur-
18 chase or sale on the occurrence of a bona
19 fide contingency that might reasonably be
20 expected to affect or be affected by the
21 creditworthiness of a party other than a
22 party to the agreement, contract, or trans-
23 action;
24 "(vii) any note, bond, or evidence of
25 indebtedness that is a security as defined

1 in section 2(a)(1) of the Securities Act of
2 1933 (15 U.S.C. 77b(a)(1));
3 "(viii) any agreement, contract, or
4 transaction that is—
5 "(I) based on a security; and
6 "(II) entered into directly or
7 through an underwriter (as defined in
8 section 2(a)(11) of the Securities Act
9 of 1933) (15 U.S.C. 77b(a)(11)) by
10 the issuer of the security for the pur-
11 poses of raising capital, unless the
12 agreement, contract, or transaction is
13 entered into to manage a risk associ-
14 ated with capital-raising;
15 "(ix) any foreign exchange forward;
16 "(x) any foreign exchange swap;
17 "(xi) any agreement, contract, or
18 transaction a counterparty of which is a
19 Federal Reserve bank, the United States
20 government or an agency of the United
21 States government that is expressly backed
22 by the full faith and credit of the United
23 States; and
24 "(xii) any security-based swap.

1 "(C) RULE OF CONSTRUCTION REGARDING
2 MASTER AGREEMENTS.—The term 'swap' shall
3 be construed to include a master agreement
4 that provides for an agreement, contract, or
5 transaction that is a swap pursuant to subpara-
6 graph (A), together with all supplements to any
7 such master agreement, without regard to
8 whether the master agreement contains an
9 agreement, contract, or transaction that is not
10 a swap pursuant to subparagraph (A), except
11 that the master agreement shall be considered
12 to be a swap only with respect to each agree-
13 ment, contract, or transaction under the master
14 agreement that is a swap pursuant to subpara-
15 graph (A).
16 "(D) FOREIGN EXCHANGE SWAPS AND
17 FORWARDS EXCEPTION.—
18 "(i) IN GENERAL.—Notwithstanding
19 clauses (ix) and (x) of subparagraph (B),
20 foreign exchange swaps and foreign ex-
21 change forwards shall be considered swaps
22 under this paragraph if the Commission
23 makes a determination that either foreign
24 exchange swaps or foreign exchange for-
25 wards or both should be regulated as

1 swaps under this Act and the Secretary
2 concurs with such determination.
3 "(ii) SCOPE OF AUTHORITY.—
4 "(I) The Commission and the
5 Secretary shall jointly determine
6 which of the authorities under this
7 Act regarding swaps the Commission
8 shall exercise over foreign exchange
9 swaps and foreign exchange forwards.
10 Such authorities shall subsequently be
11 exercised solely by the Commission.
12 The Commission and the Secretary
13 may jointly amend any previously
14 made determination under this sub-
15 clause.
16 "(II) Notwithstanding clause (i),
17 the Commission and the Secretary of
18 the Treasury may determine that ei-
19 ther foreign exchange swaps or for-
20 eign exchange forwards or both should
21 not be regulated as swaps under this
22 Act if such determination is jointly
23 made.
24 "(iii) REPORTING.—Notwithstanding
25 clauses (ix) and (x) of subparagraph (B)

1 and subparagraph (D)(ii), all foreign ex-
2 change swaps and foreign exchange for-
3 wards shall be reported to either a swap
4 repository, or, if there is no swap reposi-
5 tory that would accept such swaps or for-
6 wards, to the Commission pursuant to sec-
7 tion 4r within such time period as the
8 Commission may by rule or regulation pre-
9 scribe.

10 "(iv) SECRETARY.—For purposes of
11 this subparagraph only, the term 'Sec-
12 retary' means the Secretary of the Treas-
13 ury.

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

16 "(37) SECURITY-BASED SWAP.—The term 'se-
17 curity-based swap' has the same meaning as in sec-
18 tion 3(a)(68) of the Securities and Exchange Act of
19 1934.

20 "(38) SWAP DEALER.—

21 "(A) IN GENERAL.—The term 'swap deal-
22 er' means any person who—

23 "(i) holds itself out as a dealer in
24 swaps;

25 "(ii) makes a market in swaps;

1 "(iii) regularly engages in the pur-
2 chase of swaps and their resale to cus-
3 tomers in the ordinary course of a busi-
4 ness; or
5 "(iv) engages in any activity causing
6 the person to be commonly known in the
7 trade as a dealer or market maker in
8 swaps.
9 "(B) A person may be designated a swap
10 dealer for a single type or single class or cat-
11 egory of swap and considered not a swap dealer
12 for other types, classes, or categories of swaps.
13 "(C) DE MINIMUS EXCEPTION.—The Com-
14 mission shall make a determination to exempt
15 from designation as a swap dealer an entity
16 that engages in a de minimus amount of swap
17 dealing in connection with transactions with or
18 on the behalf of its customers.
19 "(39) MAJOR SWAP PARTICIPANT.—
20 "(A) IN GENERAL.—The term 'major swap
21 participant' means any person who is not a
22 swap dealer, and—
23 "(i) maintains a substantial net posi-
24 tion in outstanding swaps, excluding posi-
25 tions held primarily for hedging, reducing

1 or otherwise mitigating its commercial
2 risk, including operating and balance sheet
3 risk; or
4 "(ii) whose outstanding swaps create
5 substantial net counterparty exposure
6 among the aggregate of its counterparties
7 that could expose those counterparties to
8 significant credit losses.
9 "(B) DEFINITION OF SUBSTANTIAL NET
10 POSTION.—The Commission shall define by rule
11 or regulation the terms 'substantial net posi-
12 tion', 'substantial net counterparty exposure',
13 and 'significant credit losses' at thresholds that
14 the Commission determines prudent for the ef-
15 fective monitoring, management and oversight
16 of entities which are systemically important or
17 can significantly impact the financial system
18 through counterparty credit risk. In setting the
19 definitions, the Commission shall consider the
20 person's relative position in uncleared as op-
21 posed to cleared swaps.
22 "(C) A person may be designated a major
23 swap participant for 1 or more individual types
24 of swaps without being classified as a major
25 swap participant for all classes of swaps.

1 "(40) MAJOR SECURITY-BASED SWAP PARTICI-
2 PANT.—The term 'major security-based swap partic-
3 ipant' has the same meaning as in section 3(a)(67)
4 of the Securities Exchange Act of 1934.
5 "(41) APPROPRIATE FEDERAL BANKING AGEN-
6 CY.—The term 'appropriate Federal banking agency'
7 has the same meaning as in section 3(q) of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1813(q)).
9 "(42) PRUDENTIAL REGULATOR.—The term
10 'Prudential Regulator' means—
11 "(A) the Board in the case of a swap deal-
12 er, major swap participant, security-based swap
13 dealer, or major security-based swap participant
14 that is—
15 "(i) a State-chartered bank that is a
16 member of the Federal Reserve System; or
17 "(ii) a State-chartered branch or
18 agency of a foreign bank;
19 "(B) the Office of the Comptroller of the
20 Currency in the case of a swap dealer, major
21 swap participant, security-based swap dealer, or
22 major security-based swap participant that is—
23 "(i) a national bank; or
24 "(ii) a federally chartered branch or
25 agency of a foreign bank; and

1 "(C) the Federal Deposit Insurance Cor-
2 poration in the case of a swap dealer, major
3 swap participant, security-based swap dealer, or
4 major security-based swap participant that is a
5 State-chartered bank that is not a member of
6 the Federal Reserve System.

7 "(43) SECURITY-BASED SWAP DEALER.—The
8 term 'security-based swap dealer' has the same
9 meaning as in section 3(a)(71) of the Securities Ex-
10 change Act of 1934.

11 "(44) FOREIGN EXCHANGE FORWARD.—The
12 term 'foreign exchange forward' means a transaction
13 that solely involves the exchange of 2 different cur-
14 rencies on a specific future date at a fixed rate
15 agreed at the inception of the contract.

16 "(45) FOREIGN EXCHANGE SWAP.—The term
17 'foreign exchange swap' means a transaction that
18 solely involves the exchange of 2 different currencies
19 on a specific date at a fixed rate agreed at the incep-
20 tion of the contract, and a reverse exchange of the
21 same 2 currencies at a date further in the future
22 and at a fixed rate agreed at the inception of the
23 contract.

24 "(46) PERSON ASSOCIATED WITH A SECURITY-
25 BASED SWAP DEALER OR MAJOR SECURITY-BASED

1 SWAP PARTICIPANT.—The term 'person associated
2 with a security-based swap dealer or major security-
3 based swap participant' or 'associated person of a
4 security-based swap dealer or major security-based
5 swap participant' has the same meaning as in sec-
6 tion 3(a)(70) of the Securities Exchange Act of
7 1934.

8 "(47) PERSON ASSOCIATED WITH A SWAP
9 DEALER OR MAJOR SWAP PARTICIPANT.—The term
10 'person associated with a swap dealer or major swap
11 participant' or 'associated person of a swap dealer or
12 major swap participant' means any partner, officer,
13 director, or branch manager of a swap dealer or
14 major swap participant (or any person occupying a
15 similar status or performing similar functions), any
16 person directly or indirectly controlling, controlled
17 by, or under common control with a swap dealer or
18 major swap participant, or any employee of a swap
19 dealer or major swap participant, except that any
20 person associated with a swap dealer or major swap
21 participant whose functions are solely clerical or
22 ministerial shall not be included in the meaning of
23 the term other than for purposes of section 4s(b)(6).

24 "(48) SWAP REPOSITORY.—The term 'swap re-
25 pository' means any person that collects, calculates,

1 prepares or maintains information or records with
2 respect to transactions or positions in or the terms
3 and conditions of swaps entered into by third par-
4 ties.

5 "(49) SWAP EXECUTION FACILITY.—The term
6 'swap execution facility' means a person or entity
7 that facilitates the execution or trading of swaps be-
8 tween two persons through any means of interstate
9 commerce, but which is not a designated contract
10 market, including any electronic trade execution or
11 voice brokerage facility.

12 "(50) DERIVATIVE.—The term 'derivative'
13 means—

14 "(A) a contract of sale of a commodity for
15 future delivery; or

16 "(B) a swap.".

17 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
18 Commodity Futures Trading Commission shall adopt a
19 rule further defining the terms "swap", "swap dealer",
20 "major swap participant", and "eligible contract partici-
21 pant" for the purpose of including transactions and enti-
22 ties that have been structured to evade this title.

23 (c) EXEMPTIONS.—Section 4(c) of the Commodity
24 Exchange Act (7 U.S.C. 4(c)) is amended by adding at
25 the end the following: "The Commission shall not have

1 the authority to grant exemptions from the provisions of
2 sections 3101(a), 3101(c), 3104, 3105, 3106, 3107, 3109,
3 3110, 3113, 3115, 3120, and 3121 of the Derivative Mar-
4 kets Transparency and Accountability Act of 2009, except
5 as expressly authorized under the provisions of that Act.
6 Notwithstanding the preceding sentence, the Commodity
7 Futures Trading Commission may exempt from any provi-
8 sion of the Commodity Exchange Act, pursuant to this
9 subsection, an agreement, contract, or transaction that is
10 entered into pursuant to a tariff approved by the Federal
11 Energy Regulatory Commission, if the Commodity Fu-
12 tures Trading Commission determines that the exemption
13 would be consistent with the public interest, and shall con-
14 sider and not unreasonably deny any request made by the
15 Federal Energy Regulatory Commission for such an ex-
16 emption.".

17 **SEC. 3102. JURISDICTION.**

18 (a) EXCLUSIVE JURISDICTION.—Section 2(a)(1) of
19 the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is
20 amended—

21 (1) in the 1st sentence of subparagraph (A)—
22 (A) by striking "(c) through (i)" and in-
23 serting "(c) and (f)";
24 (B) by inserting "swaps, or" before "con-
25 tracts of sale";

1 (C) by striking "derivatives transaction
2 execution facility" and inserting "swap execu-
3 tion facility"; and
4 (D) by striking "5a" and inserting "5h";
5 and
6 (2) by adding at the end the following:
7 "(G)(i) Nothing in this paragraph shall
8 limit the jurisdiction conferred on the Securities
9 and Exchange Commission by the Derivative
10 Markets Transparency and Accountability Act
11 of 2009 with regard to security-based swap
12 agreements as defined pursuant to section
13 3002(e) of such Act, and security-based swaps.
14 "(ii) In addition to the authority of the Se-
15 curities Exchange Commission described in
16 clause (i), nothing in this subparagraph shall
17 limit or affect any statutory authority of the
18 Commission with respect to an agreement, con-
19 tract, or transaction described in clause (i).
20 "(H)(i) Nothing in this Act shall limit or
21 affect any statutory authority of the Federal
22 Energy Regulatory Commission with respect to
23 an agreement, contract, or transaction that is—

1 "(I) not executed, traded, or cleared
2 on a registered entity or trading facility;
3 and
4 "(II) entered into pursuant to a tariff
5 or rate schedule approved by the Federal
6 Energy Regulatory Commission.
7 "(ii) In addition to the authority of the
8 Federal Energy Regulatory Commission de-
9 scribed in clause (i), nothing in this subpara-
10 graph shall limit or affect any statutory author-
11 ity of the Commission with respect to an agree-
12 ment, contract, or transaction described in
13 clause (i).".
14 (b) ADDITIONS.—Section 2(c)(2)(A) of such Act (7
15 U.S.C. 2(c)(2)(A)) is amended—
16 (1) in clause (i) by striking "or" at the end;
17 (2) by redesignating clause (ii) as clause (iii);
18 and
19 (3) by inserting after clause (i) the following:
20 "(ii) a swap; or".
21 (c) Section 12(e) of such Act (7 U.S.C. 16(e)) is
22 amended—
23 (1) in paragraph (1)(B), by inserting "or (3)"
24 after "paragraph (2)";

1 (2) in paragraph (2), by striking subparagraphs
2 (A) and (B) and inserting the following:
3 "(A) a swap; and
4 "(B) an agreement, contract, or trans-
5 action that is excluded from this Act under sec-
6 tion 2(c) or 2(f) of this Act or title IV of the
7 Commodity Futures Modernization Act of 2000
8 or exempted under section 4(c) of this Act (re-
9 gardless of whether any such agreement, con-
10 tract, or transaction is otherwise subject to this
11 Act)."; and
12 (3) by adding at the end the following:
13 "(3) A swap may not be regulated as an insur-
14 ance contract under State law.
15 "(4) The provisions of this Act relating to
16 swaps that were enacted by the Derivative Markets
17 Transparency and Accountability Act of 2009, in-
18 cluding any rule or regulation thereunder, shall not
19 apply to activities outside the United States unless
20 those activities—
21 "(A) have a direct and significant connec-
22 tion with activities in or effect on United States
23 commerce; or
24 "(B) contravene such rules or regulations
25 as the Commission may prescribe as necessary

1 or appropriate to prevent the evasion of any
2 provision of this Act that was enacted by the
3 Derivative Markets Transparency and Account-
4 ability Act of 2009.".

5 (d) Nothing in the Derivative Markets Transparency
6 and Accountability Act of 2009 or the amendments to the
7 Commodity Exchange Act made by such Act shall limit
8 or affect any statutory enforcement authority of the Fed-
9 eral Energy Regulatory Commission pursuant to Section
10 222 of the Federal Power Act and Section 4A of the Nat-
11 ural Gas Act that existed prior to the date of enactment
12 of the Derivative Markets Transparency and Account-
13 ability Act of 2009.

14 **SEC. 3103. CLEARING AND EXECUTION TRANSPARENCY.**

15 (a) CLEARING AND EXECUTION TRANSPARENCY RE-
16 QUIREMENTS.—

17 (1) Section 2 of the Commodity Exchange Act
18 (7 U.S.C. 2) is amended by striking subsections (d),
19 (e), (g), and (h).

20 (2)(A) Prior to the final effective dates in this
21 title, a person may petition the Commodity Futures
22 Trading Commission to remain subject to para-
23 graphs (3) through (7) of section 2(h) of the Com-
24 modity Exchange Act.

1 (B) The Commodity Futures Trading Commis-
2 sion shall consider any petition submitted under sub-
3 paragraph (A) in a prompt manner and may allow
4 a person to continue operating subject to paragraphs
5 (3) through (7) of section 2(h) of the Commodity
6 Exchange Act for up to one year after the effective
7 date of this subtitle.
8 (3) Section 2 of such Act (7 U.S.C. 2) is fur-
9 ther amended by inserting after subsection (c) the
10 following:
11 "(d) SWAPS.—Nothing in this Act (other than sub-
12 sections (a)(1)(A), (a)(1)(B), (c)(2)(A)(ii), (e), (f), (j),
13 and (k), sections 4a, 4b, 4b-1, 4c(a), 4c(b), 4o, 4r, 4s,
14 4t, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2),
15 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provi-
16 sions of this Act as are applicable by their terms to reg-
17 istered entities and Commission registrants) governs or
18 applies to a swap.
19 "(e) LIMITATION ON PARTICIPATION.—It shall be
20 unlawful for any person, other than an eligible contract
21 participant, to enter into a swap unless the swap is en-
22 tered into on or subject to the rules of a board of trade
23 designated as a contract market under section 5.".

1 (4) Section 2 of such Act (7 U.S.C. 2) is fur-
2 ther amended by inserting after subsection (i) the
3 following:
4 "(j) CLEARING REQUIREMENT.—
5 "(1) IN GENERAL.—
6 "(A) STANDARD FOR CLEARING.—A swap
7 shall be submitted for clearing if a derivatives
8 clearing organization that is registered under
9 this Act will accept the swap for clearing, and
10 the Commission has determined under para-
11 graph (2)(B)(ii) that the swap is required to be
12 cleared.
13 "(B) OPEN ACCESS.—The rules of a de-
14 rivatives clearing organization described in sub-
15 paragraph (A) shall—
16 "(i) prescribe that all swaps submitted
17 to the derivatives clearing organization
18 with the same terms and conditions are
19 economically equivalent within the deriva-
20 tives clearing organization and may be off-
21 set with each other within the derivatives
22 clearing organization; and
23 "(ii) provide for non-discriminatory
24 clearing of a swap executed bilaterally or
25 on or through the rules of an unaffiliated

1 designated contract market or swap execu-
2 tion facility.
3 "(2) COMMISSION REVIEW.—
4 "(A) COMMISSION-INITIATED REVIEW.—
5 "(i) The Commission shall review each
6 swap, or any group, category, type or class
7 of swaps to make a determination as to
8 whether the swap or group, category, type,
9 or class of swaps should be required to be
10 cleared.
11 "(ii) The Commission shall provide at
12 least a 30-day public comment period re-
13 garding any determination made under
14 clause (i).
15 "(B) SWAP SUBMISSIONS.—
16 "(i) A derivatives clearing organiza-
17 tion shall submit to the Commission each
18 swap, or any group, category, type or class
19 of swaps that it plans to accept for clear-
20 ing, and provide notice to its members (in
21 a manner to be determined by the Com-
22 mission) of the submission.
23 "(ii) The Commission shall—

1 "(I) make available to the public
2 any submission received under clause
3 (i);
4 "(II) review each submission
5 made under clause (i), and determine
6 whether the swap, or group, category,
7 type, or class of swaps described in
8 the submission is required to be
9 cleared; and
10 "(III) provide at least a 30-day
11 public comment period regarding its
12 determination as to whether the clear-
13 ing requirement under paragraph
14 (1)(A) shall apply to the submission.
15 "(C) DEADLINE.—The Commission shall
16 make its determination under subparagraph
17 (B)(ii) not later than 90 days after receiving a
18 submission made under subparagraph (B)(i),
19 unless the submitting derivatives clearing orga-
20 nization agrees to an extension for the time lim-
21 itation established under this subparagraph.
22 "(D) DETERMINATION.—
23 "(i) In reviewing a submission made
24 under subparagraph (B), the Commission

1 shall review whether the submission is con-
2 sistent with section 5b(c)(2),
3 "(ii) In reviewing a swap, group of
4 swaps, or class of swaps pursuant to sub-
5 paragraph (A) or a submission made under
6 subparagraph (B), the Commission shall
7 take into account the following factors:
8 "(I) The existence of significant
9 outstanding notional exposures, trad-
10 ing liquidity and adequate pricing
11 data.
12 "(II) The availability of rule
13 framework, capacity, operational ex-
14 pertise and resources, and credit sup-
15 port infrastructure to clear the con-
16 tract on terms that are consistent
17 with the material terms and trading
18 conventions on which the contract is
19 then traded.
20 "(III) The effect on the mitiga-
21 tion of systemic risk, taking into ac-
22 count the size of the market for such
23 contract and the resources of the de-
24 rivatives clearing organization avail-
25 able to clear the contract.

1 "(IV) The effect on competition,
2 including appropriate fees and charges
3 applied to clearing.
4 "(V) The existence of reasonable
5 legal certainty in the event of the in-
6 solvency of the relevant derivatives
7 clearing organization or 1 or more of
8 its clearing members with regard to
9 the treatment of customer and swap
10 counterparty positions, funds, and
11 property.
12 "(iii) In making a determination
13 under subparagraph (B)(ii) that the clear-
14 ing requirement shall apply, the Commis-
15 sion may require such terms and condi-
16 tions to the requirement as the Commis-
17 sion determines to be appropriate.
18 "(E) RULES.—Not later than 1 year after
19 the date of the enactment of the Derivative
20 Markets Transparency and Accountability Act
21 of 2009, the Commission shall adopt rules for
22 a derivatives clearing organization's submission
23 for review, pursuant to this paragraph, of a
24 swap, or a group, category, type or class of
25 swaps, that it seeks to accept for clearing.

1 "(3) STAY OF CLEARING REQUIREMENT.—

2 "(A) After a determination pursuant to
3 paragraph (2)(B), the Commission, on applica-
4 tion of a counterparty to a swap or on its own
5 initiative, may stay the clearing requirement of
6 paragraph (1) until the Commission completes
7 a review of the terms of the swap (or the group,
8 category, type or class of swaps) and the clear-
9 ing arrangement.

10 "(B) DEADLINE.—The Commission shall
11 complete a review undertaken pursuant to sub-
12 paragraph (A) not later than 90 days after
13 issuance of the stay, unless the derivatives
14 clearing organization that clears the swap, or
15 group, category, type or class of swaps, agrees
16 to an extension of the time limitation estab-
17 lished under this subparagraph.

18 "(C) DETERMINATION.—Upon completion
19 of the review undertaken pursuant to subpara-
20 graph (A), the Commission may—

21 "(i) determine, unconditionally or sub-
22 ject to such terms and conditions as the
23 Commission determines to be appropriate,
24 that the swap, or group, category, type or
25 class of swaps, must be cleared pursuant

1 to this subsection if it finds that such
2 clearing is consistent with paragraph
3 (2)(D); or
4 "(ii) determine that the clearing re-
5 quirement of paragraph (1) shall not apply
6 to the swap, or group, category, type or
7 class of swaps.
8 "(D) RULES.—Not later than 1 year after
9 the date of the enactment of the Derivative
10 Markets Transparency and Accountability Act
11 of 2009, the Commission shall adopt rules for
12 reviewing, pursuant to this paragraph, a deriva-
13 tives clearing organization's clearing of a swap,
14 or a group, category, type or class of swaps,
15 that it has accepted for clearing.
16 "(4) PREVENTION OF EVASION.—The Commis-
17 sion may prescribe rules under this subsection, or
18 issue interpretations of the rules, as necessary to
19 prevent evasions of this subsection.
20 "(5) REQUIRED REPORTING.—
21 "(A) IN GENERAL.—All swaps that are not
22 accepted for clearing by any derivatives clearing
23 organization shall be reported either to a swap
24 repository described in section 21 or, if there is
25 no repository that would accept the swap, to the

1 Commission pursuant to section 4r within such
2 time period as the Commission may by rule or
3 regulation prescribe. Counterparties to a swap
4 may agree which counterparty will report the
5 swap as required by this paragraph.
6 "(B) SWAP DEALER DESIGNATION.—With
7 regard to swaps where only 1 counterparty is a
8 swap dealer, the swap dealer shall report the
9 swap as required by this paragraph.
10 "(6) REPORTING TRANSITION RULES.—Rules
11 adopted by the Commission under this section shall
12 provide for the reporting of data, as follows:
13 "(A) Swaps entered into before the date of
14 the enactment of this subsection shall be re-
15 ported to a registered swap repository or the
16 Commission no later than 180 days after the
17 effective date of this subsection; and
18 "(B) Swaps entered into on or after such
19 date of enactment shall be reported to a reg-
20 istered swap repository or the Commission no
21 later than the later of—
22 "(i) 90 days after such effective date;
23 or

1 "(ii) such other time after entering
2 into the swap as the Commission may pre-
3 scribe by rule or regulation.
4 "(7) CLEARING TRANSITION RULES.—
5 "(A) Swaps entered into before the date of
6 the enactment of this subsection are exempt
7 from the clearing requirements of this sub-
8 section if reported pursuant to paragraph
9 (6)(A).
10 "(B) Swaps entered into before application
11 of the clearing requirement pursuant to this
12 subsection are exempt from the clearing re-
13 quirements of this subsection if reported pursu-
14 ant to paragraph (6)(B).
15 "(8) EXCEPTIONS.—
16 "(A) IN GENERAL.—The requirements of
17 paragraph (1) shall not apply to a swap if one
18 of the counterparties to the swap—
19 "(i) is not a swap dealer or major
20 swap participant;
21 "(ii) is using swaps to hedge or miti-
22 gate commercial risk, including operating
23 or balance sheet risk; and
24 "(iii) notifies the Commission, in a
25 manner set forth by the Commission, how

1 it generally meets its financial obligations
2 associated with entering into non-cleared
3 swaps.
4 "(B) ABUSE OF EXCEPTION.—The Com-
5 mission may prescribe rules under this sub-
6 section, or issue interpretations of the rules, as
7 necessary to prevent abuse of the exemption in
8 subparagraph (A) by swap dealers and major
9 swap participants.
10 "(C) OPTION TO CLEAR.—The application
11 of the clearing exception in subparagraph (A) is
12 solely at the discretion of the counterparty to
13 the swap that meets the conditions of clauses
14 (i) through (iii) of subparagraph (A).
15 "(k) EXECUTION TRANSPARENCY.—
16 "(1) REQUIREMENT.—A swap that is subject to
17 the clearing requirement of subsection (j) shall not
18 be traded except on or through a board of trade des-
19 ignated as a contract market under section 5, or on
20 or through a swap execution facility registered under
21 section 5h, that makes the swap available for trad-
22 ing.
23 "(2) EXCEPTIONS.—The requirement of para-
24 graph (1) shall not apply to a swap if no designated

1 contract market or swap execution facility makes the
2 swap available for trading.
3 "(3) AGRICULTURAL SWAPS.—No person shall
4 offer to enter into, enter into or confirm the execu-
5 tion of, any swap in an agricultural commodity (as
6 defined by the Commission) that is subject to para-
7 graphs (1) and (2) except pursuant to a rule or reg-
8 ulation of the Commission allowing the swap under
9 such terms and conditions as the Commission shall
10 prescribe.
11 "(4) REQUIRED REPORTING.—If the exception
12 of paragraph (2) applies and there is no facility that
13 makes the swap available to trade, the counterpar-
14 ties shall comply with any recordkeeping and trans-
15 action reporting requirements that may be pre-
16 scribed by the Commission with respect to swaps
17 subject to the requirements of paragraph (1).
18 "(5) EXCHANGE TRADING.—In adopting rules
19 and regulations, the Commission shall endeavor to
20 eliminate unnecessary impediments to the trading on
21 boards of trade designated as contract markets
22 under section 5 of contracts, agreements, or trans-
23 actions that would be security-based swaps but for
24 the trading of such contracts, agreements or trans-
25 actions on such a designated contract market.".

1 (b) DERIVATIVES CLEARING ORGANIZATIONS.—

2 (1) Subsections (a) and (b) of section 5b of
3 such Act (7 U.S.C. 7a-1) are amended to read as
4 follows:

5 "(a) REGISTRATION REQUIREMENT.—

6 "(1) IN GENERAL.—It shall be unlawful for any
7 entity, unless registered with the Commission, di-
8 rectly or indirectly to make use of the mails or any
9 means or instrumentality of interstate commerce to
10 perform the functions of a derivatives clearing orga-
11 nization described in section 1a(10) of this Act with
12 respect to—

13 "(A) a contract of sale of a commodity for
14 future delivery (or option on such a contract) or
15 option on a commodity, in each case unless the
16 contract or option is—

17 "(i) excluded from this Act by section
18 2(a)(1)(C)(i), 2(c), or 2(f); or

19 "(ii) a security futures product
20 cleared by a clearing agency registered
21 with the Securities and Exchange Commis-
22 sion under the Securities Exchange Act of
23 1934 (15 U.S.C. 78a et seq.); or

24 "(B) a swap.

1 "(2) EXISTING BANKS AND CLEARING AGEN-
2 CIES.—A bank or a clearing agency registered with
3 the Securities and Exchange Commission under the
4 Securities Exchange Act of 1934 required to be reg-
5 istered as a derivatives clearing organization under
6 this section is deemed to be registered under this
7 section to the extent that the bank cleared swaps, as
8 defined in this Act, as a multilateral clearing organi-
9 zation or the clearing agency cleared swaps, as de-
10 fined in this Act, before the enactment of this sub-
11 section. A bank to which this paragraph applies
12 may, by the vote of the shareholders owning not less
13 than 51 percent of the voting interests of the bank,
14 be converted into a State corporation, partnership,
15 limited liability company, or other similar legal form
16 pursuant to a plan of conversion, if the conversion
17 is not in contravention of applicable State law.
18 "(b) VOLUNTARY REGISTRATION.—A person that
19 clears agreements, contracts, or transactions that are not
20 required to be cleared under this Act may register with
21 the Commission as a derivatives clearing organization.".
22 (2) Section 5b of such Act (7 U.S.C. 7a-1) is
23 amended by adding at the end the following:
24 "(g) RULES.—Not later than 1 year after the date
25 of the enactment of the Derivative Markets Transparency

1 and Accountability Act of 2009, the Commission shall
2 adopt rules governing persons that are registered as de-
3 rivatives clearing organizations for swaps under this sub-
4 section.

5 "(h) EXEMPTIONS.—

6 "(1) IN GENERAL.—The Commission may ex-
7 empt, conditionally or unconditionally, a derivatives
8 clearing organization from registration under this
9 section for the clearing of swaps if the Commission
10 finds that the derivatives clearing organization is
11 subject to comparable, comprehensive supervision
12 and regulation on a consolidated basis by a Pruden-
13 tial Regulator or the appropriate governmental au-
14 thorities in the organization's home country.

15 "(2) A person that is required to be registered
16 as a derivatives clearing organization under this sec-
17 tion, whose principal business is clearing securities
18 and options on securities and which is a clearing
19 agency registered with the Securities Exchange
20 Commission under the Securities Exchange Act of
21 1934 (15 U.S.C. 78a et seq.), shall be unconditions-
22 ally exempt from registration under this section sole-
23 ly for the purpose of clearing swaps, unless the Com-
24 mission finds that the clearing agency is not subject

1 to comparable, comprehensive supervision and regu-
2 lation by the Securities and Exchange Commission.
3 "(i) DESIGNATION OF COMPLIANCE OFFICER.—
4 "(1) IN GENERAL.—Each derivatives clearing
5 organization shall designate an individual to serve as
6 a compliance officer.
7 "(2) DUTIES.—The compliance officer—
8 "(A) shall report directly to the board or
9 to the senior officer of the derivatives clearing
10 organization; and
11 "(B) shall—
12 "(i) review compliance with the core
13 principles in section 5b(c)(2).
14 "(ii) in consultation with the board of
15 the derivatives clearing organization, a
16 body performing a function similar to that
17 of a board, or the senior officer of the de-
18 rivatives clearing organization, resolve any
19 conflicts of interest that may arise;
20 "(iii) be responsible for administering
21 the policies and procedures required to be
22 established pursuant to this section; and
23 "(iv) ensure compliance with this Act
24 and the rules and regulations issued under
25 this Act; and

1 "(C) shall establish procedures for remedi-
2 ation of non-compliance issues found during
3 compliance office reviews, lookbacks, internal or
4 external audit findings, self-reported errors, or
5 through validated complaints. The procedures
6 shall establish the handling, management re-
7 sponse, remediation, re-testing, and closing of
8 non-compliant issues.

9 "(3) ANNUAL REPORTS REQUIRED.—The com-
10 pliance officer shall annually prepare and sign a re-
11 port on the compliance of the derivatives clearing or-
12 ganization with this Act and the policies and proce-
13 dures of the derivatives clearing organization, includ-
14 ing the code of ethics and conflict of interest policies
15 of the derivatives clearing organization, in accord-
16 ance with rules prescribed by the Commission. The
17 compliance report shall accompany the financial re-
18 ports of the derivatives clearing organization that
19 are required to be furnished to the Commission pur-
20 suant to this section and shall include a certification
21 that, under penalty of law, the report is accurate
22 and complete.".

23 (3) Section 5b(c)(2) of such Act (7 U.S.C. 7a-
24 1(c)(2)) is amended to read as follows:

1 "(2) CORE PRINCIPLES FOR DERIVATIVES
2 CLEARING ORGANIZATIONS.—
3 "(A) IN GENERAL.—To be registered and
4 to maintain registration as a derivatives clear-
5 ing organization, a derivatives clearing organi-
6 zation shall comply with the core principles
7 specified in this paragraph and any requirement
8 that the Commission may impose by rule or
9 regulation pursuant to section 8a(5). Except
10 where the Commission determines otherwise by
11 rule or regulation, a derivatives clearing organi-
12 zation shall have reasonable discretion in estab-
13 lishing the manner in which the organization
14 complies with the core principles.
15 "(B) FINANCIAL RESOURCES.—
16 "(i) The derivatives clearing organiza-
17 tion shall have adequate financial, oper-
18 ational, and managerial resources to dis-
19 charge the responsibilities of the organiza-
20 tion.
21 "(ii) The financial resources of the de-
22 rivatives clearing organization shall at a
23 minimum exceed the total amount that
24 would—

1 "(I) enable the organization to
2 meet the financial obligations of the
3 organization to the members of, and
4 participants in, the organization, not-
5 withstanding a default by the member
6 or participant creating the largest fi-
7 nancial exposure for the organization
8 in extreme but plausible market condi-
9 tions; and
10 "(II) enable the organization to
11 cover the operating costs of the orga-
12 nization for a period of 1 year, cal-
13 culated on a rolling basis.
14 "(C) PARTICIPANT AND PRODUCT ELIGI-
15 BILITY.—
16 "(i) The derivatives clearing organiza-
17 tion shall establish—
18 "(I) appropriate admission and
19 continuing eligibility standards (in-
20 cluding sufficient financial resources
21 and operational capacity to meet obli-
22 gations arising from participation in
23 the organization) for members of and
24 participants in the organization; and

1 "(II) appropriate standards for
2 determining eligibility of agreements,
3 contracts, or transactions submitted
4 to the organization for clearing.
5 "(ii) The derivatives clearing organi-
6 zation shall have procedures in place to
7 verify that participation and membership
8 requirements are met on an ongoing basis.
9 "(iii) The participation and member-
10 ship requirements of the derivatives clear-
11 ing organization shall be objective, publicly
12 disclosed, and permit fair and open access.
13 "(D) RISK MANAGEMENT.—
14 "(i) The derivatives clearing organiza-
15 tion shall have the ability to manage the
16 risks associated with discharging the re-
17 sponsibilities of a derivatives clearing orga-
18 nization through the use of appropriate
19 tools and procedures.
20 "(ii) The derivatives clearing organi-
21 zation shall measure the credit exposures
22 of the organization to the members of, and
23 participants in, the organization at least
24 once each business day and shall monitor
25 the exposures throughout the business day.

1 "(iii) Through margin requirements
2 and other risk control mechanisms, a de-
3 rivatives clearing organization shall limit
4 the exposures of the organization to poten-
5 tial losses from defaults by the members
6 of, and participants in, the organization so
7 that the operations of the organization
8 would not be disrupted and non-defaulting
9 members or participants would not be ex-
10 posed to losses that they cannot anticipate
11 or control.
12 "(iv) Margin required from all mem-
13 bers and participants shall be sufficient to
14 cover potential exposures in normal market
15 conditions.
16 "(v) The models and parameters used
17 in setting margin requirements shall be
18 risk-based and reviewed regularly.
19 "(E) SETTLEMENT PROCEDURES.—The
20 derivatives clearing organization shall—
21 "(i) complete money settlements on a
22 timely basis, and not less than once each
23 business day;
24 "(ii) employ money settlement ar-
25 rangements that eliminate or strictly limit

1 the exposure of the organization to settle-
2 ment bank risks, such as credit and liquid-
3 ity risks from the use of banks to effect
4 money settlements;
5 "(iii) ensure money settlements are
6 final when effected;
7 "(iv) maintain an accurate record of
8 the flow of funds associated with each
9 money settlement;
10 "(v) have the ability to comply with
11 the terms and conditions of any permitted
12 netting or offset arrangements with other
13 clearing organizations; and
14 "(vi) for physical settlements, estab-
15 lish rules that clearly state the obligations
16 of the organization with respect to physical
17 deliveries, including how risks from these
18 obligations shall be identified and man-
19 aged.
20 "(F) TREATMENT OF FUNDS.—
21 "(i) The derivatives clearing organiza-
22 tion shall have standards and procedures
23 designed to protect and ensure the safety
24 of member and participant funds and as-
25 sets.

1 "(ii) The derivatives clearing organi-
2 zation shall hold member and participant
3 funds and assets in a manner whereby risk
4 of loss or of delay in the access of the or-
5 ganization to the assets and funds is mini-
6 mized.
7 "(iii) Assets and funds invested by the
8 derivatives clearing organization shall be
9 held in instruments with minimal credit,
10 market, and liquidity risks.
11 "(G) DEFAULT RULES AND PROCE-
12 DURES.—
13 "(i) The derivatives clearing organiza-
14 tion shall have rules and procedures de-
15 signed to allow for the efficient, fair, and
16 safe management of events when members
17 or participants become insolvent or other-
18 wise default on their obligations to the or-
19 ganization.
20 "(ii) The default procedures of the de-
21 rivatives clearing organization shall be
22 clearly stated, and they shall ensure that
23 the organization can take timely action to
24 contain losses and liquidity pressures and

1 to continue meeting the obligations of the
2 organization.
3 "(iii) The default procedures shall be
4 publicly available.
5 "(H) RULE ENFORCEMENT.—The deriva-
6 tives clearing organization shall—
7 "(i) maintain adequate arrangements
8 and resources for the effective monitoring
9 and enforcement of compliance with rules
10 of the organization and for resolution of
11 disputes; and
12 "(ii) have the authority and ability to
13 discipline, limit, suspend, or terminate the
14 activities of a member or participant for
15 violations of rules of the organization.
16 "(I) SYSTEM SAFEGUARDS.—The deriva-
17 tives clearing organization shall—
18 "(i) establish and maintain a program
19 of risk analysis and oversight to identify
20 and minimize sources of operational risk
21 through the development of appropriate
22 controls and procedures, and the develop-
23 ment of automated systems, that are reli-
24 able, secure, and have adequate scalable
25 capacity;

1 "(ii) establish and maintain emer-
2 gency procedures, backup facilities, and a
3 plan for disaster recovery that allows for
4 the timely recovery and resumption of op-
5 erations and the fulfillment of the respon-
6 sibilities and obligations of the organiza-
7 tion; and
8 "(iii) periodically conduct tests to
9 verify that backup resources are sufficient
10 to ensure continued order processing and
11 trade matching, price reporting, market
12 surveillance, and maintenance of a com-
13 prehensive and accurate audit trail.
14 "(J) REPORTING.—The derivatives clear-
15 ing organization shall provide to the Commis-
16 sion all information necessary for the Commis-
17 sion to conduct oversight of the organization.
18 "(K) RECORDKEEPING.—The derivatives
19 clearing organization shall maintain records of
20 all activities related to the business of the orga-
21 nization as a derivatives clearing organization
22 in a form and manner acceptable to the Com-
23 mission for a period of 5 years.
24 "(L) PUBLIC INFORMATION.—

1 "(i) The derivatives clearing organiza-
2 tion shall provide market participants with
3 sufficient information to identify and
4 evaluate accurately the risks and costs as-
5 sociated with using the services of the or-
6 ganization.
7 "(ii) The derivatives clearing organi-
8 zation shall make information concerning
9 the rules and operating procedures gov-
10 erning the clearing and settlement systems
11 (including default procedures) of the orga-
12 nization available to market participants.
13 "(iii) The derivatives clearing organi-
14 zation shall disclose publicly and to the
15 Commission information concerning—
16 "(I) the terms and conditions of
17 contracts, agreements, and trans-
18 actions cleared and settled by the or-
19 ganization;
20 "(II) clearing and other fees that
21 the organization charges the members
22 of, and participants in, the organiza-
23 tion;
24 "(III) the margin-setting method-
25 ology and the size and composition of

1 the financial resource package of the
2 organization;
3 "(IV) other information relevant
4 to participation in the settlement and
5 clearing activities of the organization;
6 and
7 "(V) daily settlement prices, vol-
8 ume, and open interest for all con-
9 tracts settled or cleared by the organi-
10 zation.
11 "(M) INFORMATION-SHARING.—The de-
12 rivatives clearing organization shall—
13 "(i) enter into and abide by the terms
14 of all appropriate and applicable domestic
15 and international information-sharing
16 agreements; and
17 "(ii) use relevant information obtained
18 from the agreements in carrying out the
19 risk management program of the organiza-
20 tion.
21 "(N) ANTITRUST CONSIDERATIONS.—The
22 derivatives clearing organization shall avoid—
23 "(i) adopting any rule or taking any
24 action that results in any unreasonable re-
25 straint of trade; or

1 "(ii) imposing any material anti-
2 competitive burden.
3 "(O) GOVERNANCE FITNESS STAND-
4 ARDS.—
5 "(i) The derivatives clearing organiza-
6 tion shall establish governance arrange-
7 ments that are transparent in order to ful-
8 fill public interest requirements and to
9 support the objectives of the owners of,
10 and participants in, the organization.
11 "(ii) The derivatives clearing organi-
12 zation shall establish and enforce appro-
13 priate fitness standards for the directors,
14 members of any disciplinary committee,
15 and members of the organization, and any
16 other persons with direct access to the set-
17 tlement or clearing activities of the organi-
18 zation, including any parties affiliated with
19 any of the persons described in this sub-
20 paragraph.
21 "(P) CONFLICTS OF INTEREST.—The de-
22 rivatives clearing organization shall establish
23 and enforce rules to minimize conflicts of inter-
24 est in the decision-making process of the orga-

1 nization and establish a process for resolving
2 the conflicts of interest.
3 "(Q) COMPOSITION OF THE BOARDS.—The
4 derivatives clearing organization shall ensure
5 that the composition of the governing board or
6 committee includes market participants.
7 "(R) LEGAL RISK.—The derivatives clear-
8 ing organization shall have a well founded,
9 transparent, and enforceable legal framework
10 for each aspect of its activities.".
11 (4) Section 5b of such Act (7 U.S.C. 7a-1) is
12 further amended by adding after subsection (i), as
13 added by this section, the following:
14 "(j) REPORTING.—
15 "(1) IN GENERAL.—A derivatives clearing orga-
16 nization that clears swaps shall provide to the Com-
17 mission all information determined by the Commis-
18 sion to be necessary to perform the responsibilities
19 of the Commission under this Act. The Commission
20 shall adopt data collection and maintenance require-
21 ments for swaps cleared by derivatives clearing orga-
22 nizations that are comparable to the corresponding
23 requirements for swaps accepted by swap reposi-
24 tories and swaps traded on swap execution facilities.
25 The Commission shall share the information, upon

1 request, with the Board, the Securities and Ex-
2 change Commission, the appropriate Federal bank-
3 ing agencies, the Financial Services Oversight Coun-
4 cil, and the Department of Justice or other persons
5 the Commission deems appropriate, including for-
6 eign financial supervisors (including foreign futures
7 authorities), foreign central banks, and foreign min-
8 istries that comply with the provisions of section 8.
9 "(2) PUBLIC INFORMATION.—A derivatives
10 clearing organization that clears swaps shall provide
11 to the Commission, or its designee, such information
12 as is required by, and in a form and at a frequency
13 to be determined by, the Commission, in order to
14 comply with the public reporting requirements con-
15 tained in section 8(j).
16 "(3) A derivatives clearing organization shall
17 keep any such books and records relating to swaps
18 defined in section 1a(35)(A)(v) open to inspection
19 and examination by the Securities and Exchange
20 Commission.".
21 (5) Section 8(e) of such Act (7 U.S.C. 12(e))
22 is amended in the last sentence by inserting "central
23 bank and ministries" after "department" each place
24 it appears.

1 (c) LEGAL CERTAINTY FOR IDENTIFIED BANKING
2 PRODUCTS.—
3 (1) REPEAL.—Sections 402(d), 404, 407,
4 408(b), and 408(c)(2) of the Legal Certainty for
5 Bank Products Act of 2000 (7 U.S.C. 27(d), 27b,
6 27e, 27f(b), and 27f(c)(2)) are repealed.
7 (2) LEGAL CERTAINTY.—Section 403 of the
8 Legal Certainty for Bank Products Act of 2000 (7
9 U.S.C. 27a) is amended to read as follows:
10 **"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.**
11 "(a) EXCLUSION.—Except as provided in subsection
12 (b) or (c)—
13 "(1) the Commodity Exchange Act shall not
14 apply to, and the Commodity Futures Trading Com-
15 mission shall not exercise regulatory authority under
16 such Act with respect to, an identified banking prod-
17 uct; and
18 "(2) the definitions of 'security-based swap' in
19 section 3(a)(68) of the Securities Exchange Act of
20 1934 and 'security-based swap agreement' in section
21 3(a)(76) of the Securities Exchange Act of 1934 do
22 not include any identified banking product.
23 "(b) EXCEPTION.—An appropriate Federal banking
24 agency may except an identified banking product of a
25 bank under its regulatory jurisdiction from the exclusions

1 in subsection (a) if the agency determines, in consultation
2 with the Commodity Futures Trading Commission and the
3 Securities and Exchange Commission, that the product—
4 "(1) would meet the definition of swap in sec-
5 tion 1a(35) of the Commodity Exchange Act (7
6 U.S.C. 1a(35)) or security-based swap in section
7 3(a)(68) of the Securities and Exchange Act of
8 1934; and
9 "(2) has become known to the trade as a swap
10 or security-based swap, or otherwise has been struc-
11 tured as an identified banking product for the pur-
12 pose of evading the provisions of the Commodity Ex-
13 change Act (7 U.S.C. 1 et seq.), the Securities Act
14 of 1933 (15 U.S.C. 77a et seq.), or the Securities
15 Exchange Act of 1934 (15 U.S.C. 78a et seq.).
16 "(c) EXCEPTION.—The exclusions in subsection (a)
17 shall not apply to an identified banking product that—
18 "(1) is a product of a bank that is not under
19 the regulatory jurisdiction of an appropriate Federal
20 banking agency;
21 "(2) meets the definition of swap in section
22 1a(35) of the Commodity Exchange Act or security-
23 based swap in section 3(a)(68) of the Securities and
24 Exchange Act of 1934; and

1 "(3) has become known to the trade as a swap
2 or security-based swap, or otherwise has been struc-
3 tured as an identified banking product for the pur-
4 pose of evading the provisions of the Commodity Ex-
5 change Act (7 U.S.C. 1 et seq.), the Securities Act
6 of 1933 (15 U.S.C. 77a et seq.), or the Securities
7 Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

8 **SEC. 3104. PUBLIC REPORTING OF AGGREGATE SWAP**
9 **DATA.**

10 Section 8 of the Commodity Exchange Act (7 U.S.C.
11 12) is amended by adding at the end the following:

12 "(j) PUBLIC REPORTING OF AGGREGATE SWAP
13 DATA.—

14 "(1) IN GENERAL.—The Commission, or a per-
15 son designated by the Commission pursuant to para-
16 graph (2), shall make available to the public, in a
17 manner that does not disclose the business trans-
18 actions and market positions of any person, aggre-
19 gate data on swap trading volumes and positions
20 from the sources set forth in paragraph (3).

21 "(2) DESIGNEE OF THE COMMISSION.—The
22 Commission may designate a derivatives clearing or-
23 ganization or a swap repository to carry out the
24 public reporting described in paragraph (1).

1 "(3) SOURCES OF INFORMATION.—The sources
2 of the information to be publicly reported as de-
3 scribed in paragraph (1) are—
4 "(A) derivatives clearing organizations
5 pursuant to section 5b(j)(2);
6 "(B) swap repositories pursuant to section
7 21(c)(3); and
8 "(C) reports received by the Commission
9 pursuant to section 4r.".

10 **SEC. 3105. SWAP REPOSITORIES.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by inserting after section 20 the following:

13 **"SEC. 21. SWAP REPOSITORIES.**

14 "(a) REGISTRATION REQUIREMENT.—
15 "(1) IN GENERAL.—It shall be unlawful for any
16 person, unless registered with the Commission, di-
17 rectly or indirectly to make use of the mails or any
18 means or instrumentality of interstate commerce to
19 perform the functions of a swap repository.
20 "(2) INSPECTION AND EXAMINATION.—Reg-
21 istered swap repositories shall be subject to inspec-
22 tion and examination by any representative of the
23 Commission.
24 "(b) STANDARD SETTING.—

1 "(1) DATA IDENTIFICATION.—The Commission
2 shall prescribe standards that specify the data ele-
3 ments for each swap that shall be collected and
4 maintained by each registered swap repository.
5 "(2) DATA COLLECTION AND MAINTENANCE.—
6 The Commission shall prescribe data collection and
7 data maintenance standards for swap repositories.
8 "(3) COMPARABILITY.—The standards pre-
9 scribed by the Commission under this subsection
10 shall be comparable to the data standards imposed
11 by the Commission on derivatives clearing organiza-
12 tions that clear swaps.
13 "(c) DUTIES.—A swap repository shall—
14 "(1) accept data prescribed by the Commission
15 for each swap under subsection (b);
16 "(2) maintain the data in such form and man-
17 ner and for such period as may be required by the
18 Commission;
19 "(3) provide to the Commission, or its designee,
20 such information as is required by, and in a form
21 and at a frequency to be determined by, the Com-
22 mission, in order to comply with the public reporting
23 requirements contained in section 8(j); and
24 "(4) make available, on a confidential basis
25 pursuant to section 8, all data obtained by the swap

1 repository, including individual counterparty trade
2 and position data, to the Commission, the appro-
3 priate Federal banking agencies, the Financial Serv-
4 ices Oversight Council, the Securities and Exchange
5 Commission, and the Department of Justice or to
6 other persons the Commission deems appropriate,
7 including foreign financial supervisors (including for-
8 eign futures authorities), foreign central banks, and
9 foreign ministries.

10 "(d) RULES.—Not later than 1 year after the date
11 of the enactment of the Derivative Markets Transparency
12 and Accountability Act of 2009, the Commission shall
13 adopt rules governing persons that are registered under
14 this section, including rules that specify the data elements
15 that shall be collected and maintained.

16 "(e) EXEMPTIONS.—The Commission may exempt,
17 conditionally or unconditionally, a swap repository from
18 the requirements of this section if the Commission finds
19 that the swap repository is subject to comparable, com-
20 prehensive supervision and regulation on a consolidated
21 basis by the Securities and Exchange Commission, a Pru-
22 dential Regulator or the appropriate governmental au-
23 thorities in the organization's home country.".

1 **SEC. 3106. REPORTING AND RECORDKEEPING.**

2 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
3 is amended by inserting after section 4q the following:

4 **"SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
5 **SWAPS.**

6 "(a) IN GENERAL.—Any person who enters into a
7 swap and—

8 "(1) did not have the swap cleared in accord-
9 ance with section 2(j)(1); and

10 "(2) did not have data regarding the swap ac-
11 cepted by a swap repository in accordance with rules
12 (including timeframes) adopted by the Commission
13 under section 21,

14 shall meet the requirements in subsection (b).

15 "(b) REPORTS.—Any person described in subsection
16 (a) shall—

17 "(1) make such reports in such form and man-
18 ner and for such period as the Commission shall pre-
19 scribe by rule or regulation regarding the swaps held
20 by the person; and

21 "(2) keep books and records pertaining to the
22 swaps held by the person in such form and manner
23 and for such period as may be required by the Com-
24 mission, which books and records shall be open to
25 inspection by any representative of the Commission,
26 an appropriate Federal banking agency, the Securi-

1 ties and Exchange Commission, the Financial Serv-
2 ices Oversight Council, and the Department of Jus-
3 tice.

4 "(c) IDENTICAL DATA.—In adopting rules under this
5 section, the Commission shall require persons described in
6 subsection (a) to report the same or a more comprehensive
7 set of data than the Commission requires swap reposi-
8 tories to collect under section 21.".

9 **SEC. 3107. REGISTRATION AND REGULATION OF SWAP**
10 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by inserting after section 4r (as added by sec-
13 tion 3106) the following:

14 **"SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEAL-**
15 **ERS AND MAJOR SWAP PARTICIPANTS.**

16 "(a) REGISTRATION.—

17 "(1) It shall be unlawful for any person to act
18 as a swap dealer unless the person is registered as
19 a swap dealer with the Commission.

20 "(2) It shall be unlawful for any person to act
21 as a major swap participant unless the person is
22 registered as a major swap participant with the
23 Commission.

24 "(b) REQUIREMENTS.—

1 "(1) IN GENERAL.—A person shall register as
2 a swap dealer or major swap participant by filing a
3 registration application with the Commission.
4 "(2) CONTENTS.—The application shall be
5 made in such form and manner as prescribed by the
6 Commission, giving any information and facts as the
7 Commission may deem necessary concerning the
8 business in which the applicant is or will be engaged.
9 The person, when registered as a swap dealer or
10 major swap participant, shall continue to report and
11 furnish to the Commission such information per-
12 taining to the person's business as the Commission
13 may require.
14 "(3) EXPIRATION.—Each registration shall ex-
15 pire at such time as the Commission may by rule or
16 regulation prescribe.
17 "(4) RULES.—Except as provided in sub-
18 sections (c), (d) and (e), the Commission may pre-
19 scribe rules applicable to swap dealers and major
20 swap participants, including rules that limit the ac-
21 tivities of swap dealers and major swap participants.
22 Except with regard to subsection (d)(1)(A), the
23 Commission may provide conditional or uncondi-
24 tional exemptions from some or all of the rules or

1 requirements prescribed under this section for swap
2 dealers and major swap participants.
3 "(5) TRANSITION.—Rules adopted under this
4 section shall provide for the registration of swap
5 dealers and major swap participants no later than 1
6 year after the effective date of the Derivative Mar-
7 kets Transparency and Accountability Act of 2009.
8 "(6) STATUTORY DISQUALIFICATION.—Except
9 to the extent otherwise specifically provided by rule,
10 regulation, or order, it shall be unlawful for a swap
11 dealer or a major swap participant to permit any
12 person associated with a swap dealer or a major
13 swap participant who is subject to a statutory dis-
14 qualification to effect or be involved in effecting
15 swaps on behalf of the swap dealer or major swap
16 participant, if the swap dealer or major swap partici-
17 pant knew, or in the exercise of reasonable care
18 should have known, of the statutory disqualification.
19 "(c) RULES.—
20 "(1) IN GENERAL.—Not later than 1 year after
21 the date of the enactment of this section, the Com-
22 mission shall adopt rules for persons that are reg-
23 istered as swap dealers or major swap participants
24 under this section.

1 "(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
2 MENTS.—The Commission shall not prescribe rules
3 imposing prudential requirements on swap dealers or
4 major swap participants for which there is a Pru-
5 dential Regulator. This provision shall not be con-
6 strued as limiting the authority of the Commission
7 to prescribe appropriate business conduct, reporting,
8 and recordkeeping requirements to protect investors.
9 "(d) CAPITAL AND MARGIN REQUIREMENTS.—
10 "(1) IN GENERAL.—
11 "(A) BANK SWAP DEALERS AND MAJOR
12 SWAP PARTICIPANTS.—Each registered swap
13 dealer and major swap participant for which
14 there is a Prudential Regulator shall meet such
15 minimum capital requirements and minimum
16 initial and variation margin requirements as the
17 Prudential Regulators shall by rule or regula-
18 tion jointly prescribe that:
19 "(i) help ensure the safety and sound-
20 ness of the swap dealer or major swap par-
21 ticipant; and
22 "(ii) are appropriate for the risk asso-
23 ciated with the non-cleared swaps held as
24 a swap dealer or major swap participant.

1 "(B) NON-BANK SWAP DEALERS AND
2 MAJOR SWAP PARTICIPANTS.—Each registered
3 swap dealer and major swap participant for
4 which there is not a Prudential Regulator shall
5 meet such minimum capital requirements and
6 minimum initial and variation margin require-
7 ments as the Commission shall by rule or regu-
8 lation prescribe that—
9 "(i) help ensure the safety and sound-
10 ness of the swap dealer or major swap par-
11 ticipant; and
12 "(ii) are appropriate for the risk asso-
13 ciated with the non-cleared swaps held as
14 a swap dealer or major swap participant.
15 "(2) RULES.—
16 "(A) BANK SWAP DEALERS AND MAJOR
17 SWAP PARTICIPANTS.—No later than 1 year
18 after the date of the enactment of the Deriva-
19 tive Markets Transparency and Accountability
20 Act of 2009, the Prudential Regulators, in con-
21 sultation with the Commission, shall jointly
22 adopt rules imposing capital and margin re-
23 quirements under this subsection for swap deal-
24 ers and major swap participants, with respect
25 to their activities as a swap dealer or major

1 swap participant for which there is a Prudential
2 Regulator
3 "(B) NON-BANK SWAP DEALERS AND
4 MAJOR SWAP PARTICIPANTS.—No later than 1
5 year after the date of the enactment of the De-
6 rivative Markets Transparency and Account-
7 ability Act of 2009, the Commission shall adopt
8 rules imposing capital and margin requirements
9 under this subsection for swap dealers and
10 major swap participants for which there is no
11 Prudential Regulator.
12 "(3) AUTHORITY.—Nothing in this section shall
13 limit the authority of the Commission to set capital
14 requirements for a registered futures commission
15 merchant or introducing broker in accordance with
16 section 4f.
17 "(e) REPORTING AND RECORDKEEPING.—
18 "(1) IN GENERAL.—Each registered swap deal-
19 er and major swap participant—
20 "(A) shall make such reports as are pre-
21 scribed by the Commission by rule or regulation
22 regarding the transactions and positions and fi-
23 nancial condition of the person;
24 "(B) for which—

1 "(i) there is a Prudential Regulator,
2 shall keep books and records of all activi-
3 ties related to its business as a swap dealer
4 or major swap participant in such form
5 and manner and for such period as may be
6 prescribed by the Commission by rule or
7 regulation;
8 "(ii) there is no Prudential Regulator,
9 shall keep books and records in such form
10 and manner and for such period as may be
11 prescribed by the Commission by rule or
12 regulation;
13 "(C) shall keep the books and records open
14 to inspection and examination by any represent-
15 ative of the Commissionl and
16 "(D) shall keep any such books and
17 records relating to swaps defined in section
18 1a(35)(A)(v) open to inspection and examina-
19 tion by the Securities and Exchange Commis-
20 sion.
21 "(2) RULES.—No later than 1 year after the
22 date of the enactment of the Derivative Markets
23 Transparency and Accountability Act of 2009, the
24 Commission shall adopt rules governing reporting

1 and recordkeeping for swap dealers and major swap
2 participants.
3 "(f) DAILY TRADING RECORDS.—
4 "(1) IN GENERAL.—Each registered swap deal-
5 er and major swap participant shall maintain daily
6 trading records of its swaps and all related records
7 (including related cash or forward transactions) and
8 recorded communications including but not limited
9 to electronic mail, instant messages, and recordings
10 of telephone calls, for such period as may be pre-
11 scribed by the Commission by rule or regulation.
12 "(2) INFORMATION REQUIREMENTS.—The daily
13 trading records shall include such information as the
14 Commission shall prescribe by rule or regulation.
15 "(3) CUSTOMER RECORDS.—Each registered
16 swap dealer and major swap participant shall main-
17 tain daily trading records for each customer or
18 counterparty in such manner and form as to be
19 identifiable with each swap transaction.
20 "(4) AUDIT TRAIL.—Each registered swap deal-
21 er and major swap participant shall maintain a com-
22 plete audit trail for conducting comprehensive and
23 accurate trade reconstructions.
24 "(5) RULES.—No later than 1 year after the
25 date of the enactment of the Derivative Markets

1 Transparency and Accountability Act of 2009, the
2 Commission shall adopt rules governing daily trad-
3 ing records for swap dealers and major swap partici-
4 pants.
5 "(g) BUSINESS CONDUCT STANDARDS.—
6 "(1) IN GENERAL.—Each registered swap deal-
7 er and major swap participant shall conform with
8 business conduct standards as may be prescribed by
9 the Commission by rule or regulation addressing—
10 "(A) fraud, manipulation, and other abu-
11 sive practices involving swaps (including swaps
12 that are offered but not entered into);
13 "(B) diligent supervision of its business as
14 a swap dealer;
15 "(C) adherence to all applicable position
16 limits; and
17 "(D) such other matters as the Commis-
18 sion shall determine to be necessary or appro-
19 priate.
20 "(2) BUSINESS CONDUCT REQUIREMENTS.—
21 Business conduct requirements adopted by the Com-
22 mission shall—
23 "(A) establish the standard of care for a
24 swap dealer or major swap participant to verify

1 that any counterparty meets the eligibility
2 standards for an eligible contract participant;
3 "(B) require disclosure by the swap dealer
4 or major swap participant to any counterparty
5 to the transaction (other than a swap dealer or
6 major swap participant) of—
7 "(i) information about the material
8 risks and characteristics of the swap;
9 "(ii) for cleared swaps, upon the re-
10 quest of the counterparty, the daily mark
11 from the appropriate derivatives clearing
12 organization, and for non-cleared swaps,
13 upon request of the counterparty, the daily
14 mark of the swap dealer or major swap
15 participant; and
16 "(iii) any other material incentives or
17 conflicts of interest that the swap dealer or
18 major swap participant may have in con-
19 nection with the swap; and
20 "(C) establish such other standards and
21 requirements as the Commission may determine
22 are necessary or appropriate in the public inter-
23 est, for the protection of investors, or otherwise
24 in furtherance of the purposes of this Act.

1 "(3) RULES.—The Commission shall prescribe
2 rules under this subsection governing business con-
3 duct standards for swap dealers and major swap
4 participants no later than 1 year after the date of
5 the enactment of the Derivative Markets Trans-
6 parency and Accountability Act of 2009.
7 "(h) DOCUMENTATION STANDARDS.—
8 "(1) IN GENERAL.—Each registered swap deal-
9 er and major swap participant shall conform with
10 standards, as may be prescribed by the Commission
11 by rule or regulation, addressing timely and accurate
12 confirmation, processing, netting, documentation,
13 and valuation of all swaps.
14 "(2) RULES.—No later than 1 year after the
15 date of the enactment of the Derivative Markets
16 Transparency and Accountability Act of 2009, the
17 Commission shall adopt rules governing the stand-
18 ards described in paragraph (1) for swap dealers
19 and major swap participants.
20 "(i) DEALER RESPONSIBILITIES.—Each registered
21 swap dealer and major swap participant at all times shall
22 comply with the following requirements:
23 "(1) MONITORING OF TRADING.—The swap
24 dealer or major swap participant shall monitor its

1 trading in swaps to prevent violations of applicable
2 position limits.
3 "(2) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The swap dealer or major swap participant
5 shall disclose to the Commission or to the Prudential
6 Regulator for the swap dealer or major swap partici-
7 pant, as applicable, information concerning—
8 "(A) terms and conditions of its swaps;
9 "(B) swap trading operations, mechanisms,
10 and practices;
11 "(C) financial integrity protections relating
12 to swaps; and
13 "(D) other information relevant to its trad-
14 ing in swaps.
15 "(3) ABILITY TO OBTAIN INFORMATION.—The
16 swap dealer or major swap participant shall—
17 "(A) establish and enforce internal systems
18 and procedures to obtain any necessary infor-
19 mation to perform any of the functions de-
20 scribed in this section; and
21 "(B) provide the information to the Com-
22 mission or to the Prudential Regulator for the
23 swap dealer or major swap participant, as ap-
24 plicable, upon request.

1 "(4) CONFLICTS OF INTEREST.—The swap
2 dealer and major swap participant shall implement
3 conflict-of-interest systems and procedures that—
4 "(A) establish structural and institutional
5 safeguards to assure that the activities of any
6 person within the firm relating to research or
7 analysis of the price or market for any com-
8 modity are separated by appropriate informa-
9 tional partitions within the firm from the re-
10 view, pressure, or oversight of those whose in-
11 volvement in trading or clearing activities might
12 potentially bias their judgment or supervision;
13 and
14 "(B) address such other issues as the
15 Commission determines appropriate.
16 "(5) ANTITRUST CONSIDERATIONS.—The swap
17 dealer or major swap participant shall avoid—
18 "(A) adopting any processes or taking any
19 actions that result in any unreasonable re-
20 straints of trade; or
21 "(B) imposing any material anticompeti-
22 tive burden on trading.".
23 **SEC. 3108. CONFLICTS OF INTEREST.**
24 Section 4d of the Commodity Exchange Act (7 U.S.C.
25 6d) is amended by—

1 (1) redesignating subsection (c) as subsection
2 (d); and
3 (2) inserting after subsection (b) the following:
4 "(c) CONFLICTS OF INTEREST.—The Commission
5 shall require that futures commission merchants and in-
6 troducing brokers implement conflict-of-interest systems
7 and procedures that—
8 "(1) establish structural and institutional safe-
9 guards to assure that the activities of any person
10 within the firm relating to research or analysis of
11 the price or market for any commodity are separated
12 by appropriate informational partitions within the
13 firm from the review, pressure, or oversight of those
14 whose involvement in trading or clearing activities
15 might potentially bias their judgment or supervision;
16 and
17 "(2) address such other issues as the Commis-
18 sion determines appropriate.".
19 **SEC. 3109. SWAP EXECUTION FACILITIES.**
20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
21 is amended by inserting after section 5g the following:
22 **"SEC. 5h. SWAP EXECUTION FACILITIES.**
23 "(a) REGISTRATION.—A person may not operate a
24 swap execution facility unless the facility is registered
25 under this section or is registered with the Commission

1 as a designated contract market under section 5 or a swap
2 execution facility under section 5.
3 "(b) REQUIREMENTS FOR TRADING.—
4 "(1) A swap execution facility that is registered
5 under subsection (a) may make available for trading
6 any swap.
7 "(2) RULES FOR TRADING THROUGH THE FA-
8 CILITY.—Not later than 1 year after the date of the
9 enactment of the Derivative Markets Transparency
10 and Accountability Act of 2009, the Commission
11 shall adopt rules to allow a swap to be traded
12 through the facilities of a designated contract mar-
13 ket or a swap execution facility. Such rules shall
14 permit an intermediary, acting as principal or agent,
15 to enter into or execute a swap, notwithstanding sec-
16 tion 2(k), if the swap is executed, reported, recorded,
17 or confirmed in accordance with the rules of the des-
18 ignated contract market or swap execution facility.
19 "(3) AGRICULTURAL SWAPS.—A swap execution
20 facility may not list for trading or confirm the exe-
21 cution of any swap in an agricultural commodity (as
22 defined by the Commission) except pursuant to a
23 rule or regulation of the Commission allowing the
24 swap under such terms and conditions as the Com-
25 mission shall prescribe.

1 "(c) TRADING BY CONTRACT MARKETS.—A board of
2 trade that operates a contract market shall, to the extent
3 that the board of trade also operates a swap execution fa-
4 cility and uses the same electronic trade execution system
5 for trading on the contract market and the swap execution
6 facility, identify whether the electronic trading is taking
7 place on the contract market or the swap execution facil-
8 ity.

9 "(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
10 CILITIES.—

11 "(1) IN GENERAL.—To be registered as, and to
12 maintain its registration as, a swap execution facil-
13 ity, the facility shall comply with the core principles
14 specified in this subsection and any requirement that
15 the Commission may impose by rule or regulation
16 pursuant to section 8a(5). Except where the Com-
17 mission determines otherwise by rule or regulation,
18 the facility shall have reasonable discretion in estab-
19 lishing the manner in which it complies with these
20 core principles.

21 "(2) COMPLIANCE WITH RULES.—The swap
22 execution facility shall—

23 "(A) monitor and enforce compliance with
24 any of the rules of the facility, including the
25 terms and conditions of the swaps traded on or

1 through the facility and any limitations on ac-
2 cess to the facility; and
3 "(B) establish and enforce trading and
4 participation rules that will deter abuses and
5 have the capacity to detect, investigate, and en-
6 force those rules, including means to—
7 "(i) provide market participants with
8 impartial access to the market; and
9 "(ii) capture information that may be
10 used in establishing whether rule violations
11 have occurred.
12 "(3) SWAPS NOT READILY SUSCEPTIBLE TO MA-
13 NIPULATION.—The swap execution facility shall per-
14 mit trading only in swaps that are not readily sus-
15 ceptible to manipulation.
16 "(4) MONITORING OF TRADING.—The swap
17 execution facility shall—
18 "(A) establish and enforce rules or terms
19 and conditions defining, or specifications detail-
20 ing, trading procedures to be used in entering
21 and executing orders traded on or through its
22 facilities; and
23 "(B) monitor trading in swaps to prevent
24 manipulation, price distortion, and disruptions
25 of the delivery or cash settlement process

1 through surveillance, compliance, and discipli-
2 nary practices and procedures, including meth-
3 ods for conducting real-time monitoring of trad-
4 ing and comprehensive and accurate trade re-
5 constructions.
6 "(5) ABILITY TO OBTAIN INFORMATION.—The
7 swap execution facility shall—
8 "(A) establish and enforce rules that will
9 allow the facility to obtain any necessary infor-
10 mation to perform any of the functions de-
11 scribed in this section;
12 "(B) provide the information to the Com-
13 mission upon request; and
14 "(C) have the capacity to carry out such
15 international information-sharing agreements as
16 the Commission may require.
17 "(6) POSITION LIMITS OR ACCOUNTABILITY.—
18 "(A) To reduce the potential threat of
19 market manipulation or congestion, especially
20 during trading in the delivery month, a swap
21 execution facility that is a trading facility shall
22 adopt for each of its contracts made available
23 for trading on the trading facility, where nec-
24 essary and appropriate, position limitations or

1 position accountability for speculators who es-
2 tablish positions in the contract.
3 "(B) For any contract of a swap execution
4 facility that is subject to a position limitation
5 established by the Commission pursuant to sec-
6 tion 4a(a), the swap execution facility—
7 "(i) may set a position limitation at a
8 level that is lower than the Commission
9 limitation; and
10 "(ii) shall monitor positions estab-
11 lished on or through the swap execution fa-
12 cility for compliance with the limit set by
13 the Commission and the limit, if any, set
14 by the swap execution facility.
15 "(7) FINANCIAL INTEGRITY OF TRANS-
16 ACTIONS.—The swap execution facility shall estab-
17 lish and enforce rules and procedures for ensuring
18 the financial integrity of swaps entered on or
19 through its facilities, including the clearance and
20 settlement of the swaps pursuant to section 2(j)(1).
21 "(8) EMERGENCY AUTHORITY.—The swap exe-
22 cution facility shall adopt rules to provide for the ex-
23 ercise of emergency authority, in consultation or co-
24 operation with the Commission, where necessary and
25 appropriate, including the authority to liquidate or

1 transfer open positions in any swap or to suspend or
2 curtail trading in a swap.
3 "(9) TIMELY PUBLICATION OF TRADING INFOR-
4 MATION.—The swap execution facility shall make
5 public timely information on price, trading volume,
6 and other trading data on swaps to the extent pre-
7 scribed by the Commission. The Commission shall
8 evaluate the impact of public disclosure on market
9 liquidity in the relevant market, and shall seek to
10 avoid public disclosure of information in a manner
11 that would significantly reduce market liquidity. The
12 Commission shall not disclose information related to
13 the internal business decisions of particular market
14 participants.
15 "(10) RECORDKEEPING AND REPORTING.—The
16 swap execution facility shall maintain records of all
17 activities related to the business of the facility, in-
18 cluding a complete audit trail, in a form and manner
19 acceptable to the Commission for a period of 5
20 years, and report to the Commission all information
21 determined by the Commission to be necessary or
22 appropriate for the Commission to perform its re-
23 sponsibilities under this Act in a form and manner
24 acceptable to the Commission. The swap execution
25 facility shall keep any such records relating to swaps

1 defined in section 1a(35)(A)(v) open to inspection
2 and examination by the Securities and Exchange
3 Commission. The Commission shall adopt data col-
4 lection and reporting requirements for swap execu-
5 tion facilities that are comparable to corresponding
6 requirements for derivatives clearing organizations
7 and swap repositories.
8 "(11) ANTITRUST CONSIDERATIONS.—The
9 swap execution facility shall avoid—
10 "(A) adopting any rules or taking any ac-
11 tions that result in any unreasonable restraints
12 of trade; or
13 "(B) imposing any material anticompeti-
14 tive burden on trading on the swap execution
15 facility.
16 "(12) CONFLICTS OF INTEREST.—The swap
17 execution facility shall—
18 "(A) establish and enforce rules to mini-
19 mize conflicts of interest in its decision-making
20 process; and
21 "(B) establish a process for resolving the
22 conflicts of interest.
23 "(13) FINANCIAL RESOURCES.—

1 "(A) The swap execution facility shall have
2 adequate financial, operational, and managerial
3 resources to discharge its responsibilities.
4 "(B) The financial resources of the swap
5 execution facility shall be considered adequate if
6 their value exceeds the total amount that would
7 enable the facility to cover its operating costs
8 for a period of 1 year, calculated on a rolling
9 basis.
10 "(14) SYSTEM SAFEGUARDS.—The swap execu-
11 tion facility shall—
12 "(A) establish and maintain a program of
13 risk analysis and oversight to identify and mini-
14 mize sources of operational risk, through the
15 development of appropriate controls and proce-
16 dures, and the development of automated sys-
17 tems, that are reliable, secure, and have ade-
18 quate scalable capacity;
19 "(B) establish and maintain emergency
20 procedures, backup facilities, and a plan for dis-
21 aster recovery that allow for the timely recovery
22 and resumption of operations and the fulfill-
23 ment of the swap execution facility's respon-
24 sibilities and obligation; and

1 "(C) periodically conduct tests to verify
2 that backup resources are sufficient to ensure
3 continued order processing and trade matching,
4 price reporting, market surveillance, and main-
5 tenance of a comprehensive and accurate audit
6 trail.
7 "(15) DESIGNATION OF COMPLIANCE OFFI-
8 CER.—
9 "(A) IN GENERAL.—Each swap execution
10 facility shall designate an individual to serve as
11 a compliance officer.
12 "(B) DUTIES.—The compliance officer—
13 "(i) shall report directly to the board
14 or to the senior officer of the facility;
15 "(ii) shall—
16 "(I) review compliance with the
17 core principles in this subsection;
18 "(II) in consultation with the
19 board of the facility, a body per-
20 forming a function similar to that of
21 a board, or the senior officer of the
22 facility, resolve any conflicts of inter-
23 est that may arise;
24 "(III) be responsible for admin-
25 istering the policies and procedures

1 required to be established pursuant to
2 this section; and
3 "(IV) ensure compliance with
4 this Act and the rules and regulations
5 issued under this Act, including rules
6 prescribed by the Commission pursu-
7 ant to this section; and
8 "(iii) shall establish procedures for re-
9 mediation of non-compliance issues found
10 during compliance office reviews,
11 lookbacks, internal or external audit find-
12 ings, self-reported errors, or through vali-
13 dated complaints, and for the handling,
14 management response, remediation, re-
15 testing, and closing of non-compliant
16 issues.
17 "(C) ANNUAL REPORTS REQUIRED.—The
18 compliance officer shall annually prepare and
19 sign a report on the compliance of the facility
20 with this Act and its policies and procedures,
21 including its code of ethics and conflict of inter-
22 est policies, in accordance with rules prescribed
23 by the Commission. The compliance report shall
24 accompany the financial reports of the facility
25 that are required to be furnished to the Com-

1 mission pursuant to this section and shall in-
2 clude a certification that, under penalty of law,
3 the report is accurate and complete.

4 "(e) EXEMPTIONS.—The Commission may exempt,
5 conditionally or unconditionally, a swap execution facility
6 from registration under this section if the Commission
7 finds that the facility is subject to comparable, comprehen-
8 sive supervision and regulation on a consolidated basis by
9 the Securities and Exchange Commission, a Prudential
10 Regulator or the appropriate governmental authorities in
11 the organization's home country.

12 "(f) RULES.—No later than 1 year after the date of
13 the enactment of the Derivative Markets Transparency
14 and Accountability Act of 2009, the Commission shall pre-
15 scribe rules governing the regulation of swap execution fa-
16 cilities under this section.".

17 **SEC. 3110. DERIVATIVES TRANSACTION EXECUTION FACILI-**
18 **TIES AND EXEMPT BOARDS OF TRADE.**

19 (a) Sections 5a and 5d of the Commodity Exchange
20 Act (7 U.S.C. 1 et seq.) are repealed.

21 (b)(1) Prior to the final effective dates in this title,
22 a person may petition the Commodity Futures Trading
23 Commission to remain subject to the provisions of section
24 5d of the Commodity Exchange Act, as such provisions
25 existed prior to the effective date of this subtitle.

1 (2) The Commodity Futures Trading Commission
2 shall consider any petition submitted under paragraph (1)
3 in a prompt manner and may allow a person to continue
4 operating subject to the provisions of section 5d of the
5 Commodity Exchange Act for up to 1 year after the effec-
6 tive date of this subtitle.

7 **SEC. 3111. DESIGNATED CONTRACT MARKETS.**

8 (a) Section 5(d) of the Commodity Exchange Act (7
9 U.S.C. 7(d)) is amended by striking paragraphs (1) and
10 (2) and inserting the following:

11 "(1) IN GENERAL.—To be designated as, and
12 to maintain the designation of a board of trade as
13 a contract market, the board of trade shall comply
14 with the core principles specified in this subsection
15 and any requirement that the Commission may im-
16 pose by rule or regulation pursuant to section 8a(5).
17 Except where the Commission determines otherwise
18 by rule or regulation, the board of trade shall have
19 reasonable discretion in establishing the manner in
20 which it complies with the core principles.

21 "(2) COMPLIANCE WITH RULES.—

22 "(A) The board of trade shall monitor and
23 enforce compliance with the rules of the con-
24 tract market, including access requirements, the
25 terms and conditions of any contracts to be

1 traded on the contract market and the contract
2 market's abusive trade practice prohibitions.
3 "(B) The board of trade shall have the ca-
4 pacity to detect, investigate, and apply appro-
5 priate sanctions to, any person or entity that
6 violates the rules.
7 "(C) The rules shall provide the board of
8 trade with the ability and authority to obtain
9 any necessary information to perform any of
10 the functions described in this subsection, in-
11 cluding the capacity to carry out such inter-
12 national information-sharing agreements as the
13 Commission may require.".
14 (b) Section 5(d) of such Act (7 U.S.C. 7(d)) is
15 amended by striking paragraphs (4) and (5) and inserting
16 the following:
17 "(4) PREVENTION OF MARKET DISRUPTION.—
18 The board of trade shall have the capacity and re-
19 sponsibility to prevent manipulation, price distortion,
20 and disruptions of the delivery or cash-settlement
21 process through market surveillance, compliance,
22 and enforcement practices and procedures, including
23 methods for conducting real-time monitoring of trad-
24 ing and comprehensive and accurate trade recon-
25 structions.

1 "(5) POSITION LIMITATIONS OR ACCOUNT-
2 ABILITY.—
3 "(A) To reduce the potential threat of
4 market manipulation or congestion, especially
5 during trading in the delivery month, the board
6 of trade shall adopt for each of its contracts,
7 where necessary and appropriate, position limi-
8 tations or position accountability for specu-
9 lators.
10 "(B) For any contract that is subject to a
11 position limitation established by the Commis-
12 sion pursuant to section 4a(a), the board of
13 trade shall set its position limitation at a level
14 no higher than the Commission-established limi-
15 tation.".
16 (c) Section 5(d) of such Act (7 U.S.C. 7(d)) is
17 amended by striking paragraph (7) and inserting the fol-
18 lowing:
19 "(7) AVAILABILITY OF GENERAL INFORMA-
20 TION.—The board of trade shall make available to
21 market authorities, market participants, and the
22 public accurate information concerning—
23 "(A) the terms and conditions of the con-
24 tracts of the contract market; and

1 "(B) the rules, regulations and mecha-
2 nisms for executing transactions on or through
3 the facilities of the contract market, and the
4 rules and specifications describing the operation
5 of the board of trade's electronic matching plat-
6 form or other trade execution facility.".
7 (d) Section 5(d) of such Act (7 U.S.C. 7(d)) is
8 amended by striking paragraph (9) and inserting the fol-
9 lowing:
10 "(9) EXECUTION OF TRANSACTIONS.—
11 "(A) The board of trade shall provide a
12 competitive, open, and efficient market and
13 mechanism for executing transactions that pro-
14 tects the price discovery process of trading in
15 the board of trade's centralized market.
16 "(B) The rules may authorize, for bona
17 fide business purposes—
18 "(i) transfer trades or office trades;
19 "(ii) an exchange of—
20 "(I) futures in connection with a
21 cash commodity transaction;
22 "(II) futures for cash commod-
23 ities; or
24 "(III) futures for swaps; or

1 "(iii) A futures commission merchant,
2 acting as principal or agent, to enter into
3 or confirm the execution of a contract for
4 the purchase or sale of a commodity for fu-
5 ture delivery if the contract is reported, re-
6 corded, or cleared in accordance with the
7 rules of the contract market or a deriva-
8 tives clearing organization.".
9 (e) Section 5(d)(17) of such Act (7 U.S.C. 7(d)(17))
10 is amended by adding at the end the following: "The board
11 of trade shall keep any such records relating to swaps de-
12 fined in section 1a(35)(A)(v) open to inspection and exam-
13 ination by the Securities and Exchange Commission.".
14 (f) Section 5(d) of such Act (7 U.S.C. 7(d)) is amend-
15 ed by adding at the end the following:
16 "(19) FINANCIAL RESOURCES.—The board of
17 trade shall have adequate financial, operational, and
18 managerial resources to discharge the responsibil-
19 ities of a contract market. For the financial re-
20 sources of a board of trade to be considered ade-
21 quate, their value shall exceed the total amount that
22 would enable the contract market to cover its oper-
23 ating costs for a period of 1 year, calculated on a
24 rolling basis.

1 "(20) SYSTEM SAFEGUARDS.—The board of
2 trade shall—
3 "(A) establish and maintain a program of
4 risk analysis and oversight to identify and mini-
5 mize sources of operational risk through the de-
6 velopment of appropriate controls and proce-
7 dures, and the development of automated sys-
8 tems, that are reliable, secure, and give ade-
9 quate scalable capacity;
10 "(B) establish and maintain emergency
11 procedures, backup facilities, and a plan for dis-
12 aster recovery that allow for the timely recovery
13 and resumption of operations and the fulfill-
14 ment of the board of trade's responsibilities and
15 obligations; and
16 "(C) periodically conduct tests to verify
17 that back-up resources are sufficient to ensure
18 continued order processing and trade matching,
19 price reporting, market surveillance, and main-
20 tenance of a comprehensive and accurate audit
21 trail.
22 "(21) DIVERSITY OF BOARDS OF DIRECTORS.—
23 The board of trade, if a publicly traded company,
24 shall endeavor to recruit individuals to serve on the
25 board of directors and the other decision-making

1 bodies (as determined by the Commission) of the
2 board of trade from among, and to have the com-
3 position of the bodies reflect, a broad and culturally
4 diverse pool of qualified candidates.
5 "(22) DISCIPLINARY PROCEDURES.—The board
6 of trade shall establish and enforce disciplinary pro-
7 cedures that authorize the board of trade to dis-
8 cipline, suspend, or expel members or market par-
9 ticipants that violate the rules of the board of trade,
10 or similar methods for performing the same func-
11 tions, including delegation of the functions to third
12 parties.".
13 (g) Section 5 of such Act (7 U.S.C. 7) is amended
14 by striking subsection (b).
15 **SEC. 3112. MARGIN.**
16 (a) Section 8a(7)(C) of the Commodity Exchange Act
17 (7 U.S.C. 12a(7)(C)) is amended by striking ", excepting
18 the setting of levels of margin".
19 (b) Section 8a(7) of such Act (7 U.S.C. 12a(7)) is
20 amended by redesignating subparagraphs (D) through (F)
21 as subparagraphs (E) through (G), respectively, and in-
22 serting after subparagraph (C) the following:
23 "(D) margin requirements, provided that
24 such rules, regulations, or orders shall—

1 "(i) be limited to protecting the finan-
2 cial integrity of the derivatives clearing or-
3 ganization;
4 "(ii) be designed for risk management
5 purposes in order to protect the financial
6 integrity of transactions; and
7 "(iii) not set specific margin
8 amounts.".

9 **SEC. 3113. POSITION LIMITS.**

10 (a) Section 4a(a) of the Commodity Exchange Act (7
11 U.S.C. 6a(a)) is amended by—
12 (1) inserting "(1)" after "(a)";
13 (2) striking "on electronic trading facilities with
14 respect to a significant price discovery contract" in
15 the first sentence and inserting "swaps that perform
16 or affect a significant price discovery function with
17 respect to registered entities";
18 (3) inserting ", including any group or class of
19 traders," in the second sentence after "held by any
20 person";
21 (4) striking "on an electronic trading facility
22 with respect to a significant price discovery con-
23 tract," in the second sentence and inserting "swaps
24 that perform or affect a significant price discovery
25 function with respect to registered entities,"; and

1 (5) inserting at the end the following:

2 "(2)(A) In accordance with the standards set
3 forth in paragraph (1) of this subsection and con-
4 sistent with the good faith exception cited in sub-
5 section (b)(2), with respect to physical commodities
6 other than excluded commodities as defined by the
7 Commission, the Commission shall by rule, regula-
8 tion, or order establish limits on the amount of posi-
9 tions, as appropriate, other than bona fide hedge po-
10 sitions, that may be held by any person with respect
11 to contracts of sale for future delivery or with re-
12 spect to options on the contracts or commodities
13 traded on or subject to the rules of a designated
14 contract market.

15 "(B)(i) For exempt commodities, the limits
16 shall be established within 180 days after the date
17 of the enactment of this paragraph.

18 "(ii) For agricultural commodities, the limits
19 shall be established within 270 days after the date
20 of the enactment of this paragraph.

21 "(C) In establishing the limits, the Commission
22 shall strive to ensure that trading on foreign boards
23 of trade in the same commodity will be subject to
24 comparable limits and that any limits to be imposed
25 by the Commission will not cause price discovery in

1 the commodity to shift to trading on the foreign
2 boards of trade.
3 "(3) In establishing the limits required in para-
4 graph (2), the Commission, as appropriate, shall set
5 limits—
6 "(A) on the number of positions that may
7 be held by any person for the spot month, each
8 other month, and the aggregate number of posi-
9 tions that may be held by any person for all
10 months; and
11 "(B) to the maximum extent practicable,
12 in its discretion—
13 "(i) to diminish, eliminate, or prevent
14 excessive speculation as described under
15 this section;
16 "(ii) to deter and prevent market ma-
17 nipulation, squeezes, and corners;
18 "(iii) to ensure sufficient market li-
19 quidity for bona fide hedgers; and
20 "(iv) to ensure that the price dis-
21 covery function of the underlying market is
22 not disrupted.
23 "(4)(A) Not later than 150 days after the es-
24 tablishment of position limits pursuant to paragraph
25 (2), and biannually thereafter, the Commission shall

1 hold 2 public hearings, 1 for agriculture commodities
2 and 1 for energy commodities as such terms are de-
3 fined by the Commission, in order to receive rec-
4 ommendations regarding the position limits to be es-
5 tablished in paragraph (2).
6 "(B) Each public hearing held pursuant to sub-
7 paragraph (A) shall, at a minimum providing there
8 is sufficient interest, receive recommendations
9 from—
10 "(i) 7 predominantly commercial short
11 hedgers of the actual physical commodity for
12 future delivery;
13 "(ii) 7 predominantly commercial long
14 hedgers of the actual physical commodity for
15 future delivery;
16 "(iii) 4 non-commercial participants in
17 markets for commodities for future delivery;
18 and
19 "(iv) each designated contract market
20 upon which a contract in the commodity for fu-
21 ture delivery is traded.
22 "(C) Within 60 days after each public hearing
23 held pursuant to subparagraph (A), the Commission
24 shall publish in the Federal Register its response to

1 the recommendations regarding position limits heard
2 at the hearing.
3 "(5) SIGNIFICANT PRICE DISCOVERY FUNC-
4 TION.—In making a determination whether a swap
5 performs or affects a significant price discovery
6 function with respect to regulated markets, the Com-
7 mission shall consider, as appropriate:
8 "(A) PRICE LINKAGE.—The extent to
9 which the swap uses or otherwise relies on a
10 daily or final settlement price, or other major
11 price parameter, of another contract traded on
12 a regulated market based upon the same under-
13 lying commodity, to value a position, transfer or
14 convert a position, financially settle a position,
15 or close out a position;
16 "(B) ARBITRAGE.—The extent to which
17 the price for the swap is sufficiently related to
18 the price of another contract traded on a regu-
19 lated market based upon the same underlying
20 commodity so as to permit market participants
21 to effectively arbitrage between the markets by
22 simultaneously maintaining positions or exe-
23 cuting trades in the swaps on a frequent and
24 recurring basis;

1 "(C) MATERIAL PRICE REFERENCE.—The
2 extent to which, on a frequent and recurring
3 basis, bids, offers, or transactions in a contract
4 traded on a regulated market are directly based
5 on, or are determined by referencing, the price
6 generated by the swap;
7 "(D) MATERIAL LIQUIDITY.—The extent
8 to which the volume of swaps being traded in
9 the commodity is sufficient to have a material
10 effect on another contract traded on a regulated
11 market; and
12 "(E) OTHER MATERIAL FACTORS.—Such
13 other material factors as the Commission speci-
14 fies by rule or regulation as relevant to deter-
15 mine whether a swap serves a significant price
16 discovery function with respect to a regulated
17 market.
18 "(6) ECONOMICALLY EQUIVALENT CON-
19 TRACTS.—
20 "(A) Notwithstanding any other provision
21 of this section, the Commission shall establish
22 limits on the amount of positions, including ag-
23 gregate position limits, as appropriate, other
24 than bona fide hedge positions, that may be
25 held by any person with respect to swaps that

1 are economically equivalent to contracts of sale
2 for future delivery or to options on the con-
3 tracts or commodities traded on or subject to
4 the rules of a designated contract market sub-
5 ject to paragraph (2).
6 "(B) In establishing limits pursuant to
7 subparagraph (A), the Commission shall—
8 "(i) develop the limits concurrently
9 with limits established under paragraph
10 (2), and the limits shall have similar re-
11 quirements as under paragraph (3)(B);
12 and
13 "(ii) establish the limits simulta-
14 neously with limits established under para-
15 graph (2).
16 "(7) AGGREGATE POSITION LIMITS.—The Com-
17 mission shall, by rule or regulation, establish limits
18 (including related hedge exemption provisions) on
19 the aggregate number or amount of positions in con-
20 tracts based upon the same underlying commodity
21 (as defined by the Commission) that may be held by
22 any person, including any group or class of traders,
23 for each month across—
24 "(A) contracts listed by designated con-
25 tract markets;

1 "(B) with respect to an agreement con-
2 tract, or transaction that settles against any
3 price (including the daily or final settlement
4 price) of 1 or more contracts listed for trading
5 on a registered entity, contracts traded on a
6 foreign board of trade that provides members or
7 other participants located in the United States
8 with direct access to its electronic trading and
9 order matching system; and
10 "(C) swap contracts that perform or affect
11 a significant price discovery function with re-
12 spect to regulated entities.
13 "(8) EXEMPTIONS.—The Commission, by rule,
14 regulation, or order, may exempt, conditionally or
15 unconditionally, any person or class of persons, any
16 swap or class of swaps, any contract of sale of a
17 commodity for future delivery or class of such con-
18 tracts, any option or class of options, or any trans-
19 action or class of transactions from any requirement
20 it may establish under this section with respect to
21 position limits.".
22 (b) Section 4a(b) of such Act (7 U.S.C. 6a(b)) is
23 amended—
24 (1) in paragraph (1), by striking "or derivatives
25 transaction execution facility or facilities or elec-

1 tronic trading facility" and inserting "or swap exe-
2 cution facility or facilities"; and
3 (2) in paragraph (2), by striking "or derivatives
4 transaction execution facility or facilities or elec-
5 tronic trading facility" and inserting "or swap exe-
6 cution facility".
7 (c) Section 4a(c) of such Act is amended—
8 (1) by inserting "(1)" after "(c)"; and
9 (2) by adding after and below the end the fol-
10 lowing:
11 "(2) For the purposes of implementation of
12 subsection (a)(2) for contracts of sale for future de-
13 livery or options on the contracts or commodities,
14 the Commission shall define what constitutes a bona
15 fide hedging transaction or position as a transaction
16 or position that—
17 "(A)(i) represents a substitute for trans-
18 actions made or to be made or positions taken
19 or to be taken at a later time in a physical mar-
20 keting channel;
21 "(ii) is economically appropriate to the re-
22 duction of risks in the conduct and manage-
23 ment of a commercial enterprise; and
24 "(iii) arises from the potential change in
25 the value of—

1 "(I) assets that a person owns, pro-
2 duces, manufactures, processes, or mer-
3 chandises or anticipates owning, producing,
4 manufacturing, processing, or merchan-
5 dising;
6 "(II) liabilities that a person owns or
7 anticipates incurring; or
8 "(III) services that a person provides,
9 purchases, or anticipates providing or pur-
10 chasing; or
11 "(B) reduces risks attendant to a position
12 resulting from a swap that—
13 "(i) was executed opposite a
14 counterparty for which the transaction
15 would qualify as a bona fide hedging trans-
16 action pursuant to subparagraph (A); or
17 "(ii) meets the requirements of sub-
18 paragraph (A).".
19 (d) This section shall become effective on the date
20 of its enactment.
21 **SEC. 3114. ENHANCED AUTHORITY OVER REGISTERED EN-**
22 **TITIES.**
23 (a) Section 5c(a) of the Commodity Exchange Act (7
24 U.S.C. 7a-2(a)) is amended—

1 (1) in paragraph (1), by striking "5a(d) and
2 5b(c)(2)" and inserting "5b(c)(2) and 5h(e)"; and
3 (2) in paragraph (2), by striking "shall not"
4 and inserting "may".
5 (b) Section 5c(b) of such Act (7 U.S.C. 7a-2(b)) is
6 amended in each of paragraphs (1), (2), and (3) by insert-
7 ing "or swap execution facility" after "contract market"
8 each place it appears.
9 (c) Section 5c(c)(1) of such Act (7 U.S.C. 7a-2(c)(1))
10 is amended—
11 (1) by inserting "(A)" after "IN GENERAL.—";
12 and
13 (2) by adding at the end the following:
14 "(B) The new rule or rule amendment shall be-
15 come effective, pursuant to the registered entity's
16 certification and notice of such certification to its
17 members (in a manner to be determined by the
18 Commission), 10 business days after the Commis-
19 sion's receipt of the certification (or such shorter pe-
20 riod determined by the Commission by rule or regu-
21 lation) unless the Commission notifies the registered
22 entity within such time that it is staying the certifi-
23 cation because there exist novel or complex issues
24 that require additional time to analyze, an inad-
25 equate explanation by the submitting registered enti-

1 ty, or a potential inconsistency with this Act (includ-
2 ing regulations under this Act).
3 "(C)(i) A notification by the Commission pursu-
4 ant to subparagraph (B) shall stay the certification
5 of the new contract or instrument or clearing of the
6 new contract or instrument, new rule or new amend-
7 ment for up to an additional 90 days from the date
8 of the notification.
9 "(ii) The Commission shall provide at least a
10 30-day public comment period, within the 90-day pe-
11 riod in which the stay is in effect described in clause
12 (i), whenever it reviews a rule or rule amendment
13 pursuant to a notification by the Commission under
14 this paragraph.".
15 (d) Section 5c(d) of such Act (7 U.S.C. 7a-2(d)) is
16 repealed.
17 **SEC. 3115. FOREIGN BOARDS OF TRADE.**
18 (a) IN GENERAL.—Section 4 of the Commodity Ex-
19 change Act (7 U.S.C. 6) is amended by adding at the end
20 the following:
21 "(e) FOREIGN BOARDS OF TRADE.—
22 "(1) IN GENERAL.—The Commission may not
23 permit a foreign board of trade to provide to the
24 members of the foreign board of trade or other par-
25 ticipants located in the United States direct access

1 to the electronic trading and order-matching system
2 of the foreign board of trade with respect to an
3 agreement, contract, or transaction that settles
4 against any price (including the daily or final settle-
5 ment price) of 1 or more contracts listed for trading
6 on a registered entity, unless the Commission deter-
7 mines that—
8 "(A) the foreign board of trade makes pub-
9 lic daily trading information regarding the
10 agreement, contract, or transaction that is com-
11 parable to the daily trading information pub-
12 lished by the registered entity for the 1 or more
13 contracts against which the agreement, con-
14 tract, or transaction traded on the foreign
15 board of trade settles; and
16 "(B) the foreign board of trade (or the for-
17 eign futures authority that oversees the foreign
18 board of trade)—
19 "(i) adopts position limits (including
20 related hedge exemption provisions) for the
21 agreement, contract, or transaction that
22 are comparable, taking into consideration
23 the relative sizes of the respective markets,
24 to the position limits (including related
25 hedge exemption provisions) adopted by

1 the registered entity for the 1 or more con-
2 tracts against which the agreement, con-
3 tract, or transaction traded on the foreign
4 board of trade settles;
5 "(ii) has the authority to require or
6 direct market participants to limit, reduce,
7 or liquidate any position the foreign board
8 of trade (or the foreign futures authority
9 that oversees the foreign board of trade)
10 determines to be necessary to prevent or
11 reduce the threat of price manipulation,
12 excessive speculation as described in sec-
13 tion 4a, price distortion, or disruption of
14 delivery or the cash settlement process;
15 "(iii) agrees to promptly notify the
16 Commission, with regard to the agreement,
17 contract, or transaction that settles against
18 any price (including the daily or final set-
19 tlement price) of 1 or more contracts listed
20 for trading on a registered entity, of any
21 change regarding—
22 "(I) the information that the for-
23 eign board of trade will make publicly
24 available;

1 "(II) the position limits that the
2 foreign board of trade or foreign fu-
3 tures authority will adopt and enforce;
4 "(III) the position reductions re-
5 quired to prevent manipulation, exces-
6 sive speculation as described in sec-
7 tion 4a, price distortion, or disruption
8 of delivery or the cash settlement
9 process; and
10 "(IV) any other area of interest
11 expressed by the Commission to the
12 foreign board of trade or foreign fu-
13 tures authority;
14 "(iv) provides information to the
15 Commission regarding large trader posi-
16 tions in the agreement, contract, or trans-
17 action that is comparable to the large trad-
18 er position information collected by the
19 Commission for the 1 or more contracts
20 against which the agreement, contract, or
21 transaction traded on the foreign board of
22 trade settles; and
23 "(v) provides the Commission with in-
24 formation necessary to publish reports on
25 aggregate trader positions for the agree-

1 ment, contract, or transaction traded on
2 the foreign board of trade that are com-
3 parable to the reports on aggregate trader
4 positions for the 1 or more contracts
5 against which the agreement, contract, or
6 transaction traded on the foreign board of
7 trade settles.

8 "(2) EXISTING FOREIGN BOARDS OF TRADE.—
9 Paragraph (1) shall not be effective with respect to
10 any foreign board of trade to which the Commission
11 has granted direct access permission before the date
12 of the enactment of this subsection until the date
13 that is 180 days after such date of enactment.

14 "(3) PERSONS LOCATED IN THE UNITED
15 STATES.—".

16 (b) LIABILITY OF REGISTERED PERSONS TRADING
17 ON A FOREIGN BOARD OF TRADE.—

18 (1) Section 4(a) of such Act (7. U.S.C. 6(a)) is
19 amended by inserting "or by subsection (f)" after
20 "Unless exempted by the Commission pursuant to
21 subsection (c)"; and

22 (2) Section 4 of such Act (7 U.S.C 6) is further
23 amended by adding at the end the following:

24 "(f)(1) A person registered with the Commission, or
25 exempt from registration by the Commission, under this

1 Act may not be found to have violated subsection (a) with
2 respect to a transaction in, or in connection with, a con-
3 tract of sale of a commodity for future delivery if the per-
4 son—
5 "(A) has reason to believe that the transaction
6 and the contract is made on or subject to the rules
7 of a foreign board of trade that is—
8 "(i) legally organized under the laws of a
9 foreign country;
10 "(ii) authorized to act as a board of trade
11 by a foreign futures authority; and
12 "(iii) subject to regulation by the foreign
13 futures authority; and
14 "(B) has not been determined by the Commis-
15 sion to be operating in violation of subsection (a).
16 "(2) Nothing in this subsection shall be construed as
17 implying or creating any presumption that a board of
18 trade, exchange, or market is located outside the United
19 States, or its territories or possessions, for purposes of
20 subsection (a).".
21 (c) CONTRACT ENFORCEMENT FOR FOREIGN FU-
22 TURES CONTRACTS.—Section 22(a) of such Act (7 U.S.C.
23 25(a)) is amended by adding at the end the following:
24 "(5) CONTRACT ENFORCEMENT FOR FOREIGN
25 FUTURES CONTRACTS.—A contract of sale of a com-

1 modity for future delivery traded or executed on or
2 through the facilities of a board of trade, exchange,
3 or market located outside the United States for pur-
4 poses of section 4(a) shall not be void, voidable, or
5 unenforceable, and a party to such a contract shall
6 not be entitled to rescind or recover any payment
7 made with respect to the contract, based on the fail-
8 ure of the foreign board of trade to comply with any
9 provision of this Act.".

10 **SEC. 3116. LEGAL CERTAINTY FOR SWAPS.**

11 Section 22(a)(4) of the Commodity Exchange Act (7
12 U.S.C. 25(a)(4)) is amended to read as follows:

13 "(4) CONTRACT ENFORCEMENT BETWEEN ELI-
14 GIBLE COUNTERPARTIES.—

15 "(A) A hybrid instrument sold to any in-
16 vestor shall not be void, voidable, or unenforce-
17 able, and a party to such a hybrid instrument
18 shall not be entitled to rescind, or recover any
19 payment made with respect to, such a hybrid
20 instrument under this section or any other pro-
21 vision of Federal or State law, based solely on
22 the failure of the hybrid instrument to comply
23 with the terms or conditions of section 2(f) or
24 regulations of the Commission; and

1 "(B) An agreement, contract, or trans-
2 action between eligible contract participants or
3 persons reasonably believed to be eligible con-
4 tract participants shall not be void, voidable, or
5 unenforceable, and a party thereto shall not be
6 entitled to rescind, or recover any payment
7 made with respect to, such an agreement, con-
8 tract, or transaction under this section or any
9 other provision of Federal or State law, based
10 solely on the failure of the agreement, contract,
11 or transaction to meet the definition of a swap
12 set forth in section 1a, be traded in the manner
13 set forth in section 2(k)(1), or be cleared pursu-
14 ant to 2(j)(1) or regulations of the Commission
15 pursuant thereto.".

16 **SEC. 3117. FDICIA AMENDMENTS.**

17 Sections 408 and 409 of the Federal Deposit Insur-
18 ance Corporation Improvement Act of 1991 (12 U.S.C.
19 4421 and 4422) are repealed.

20 **SEC. 3118. ENFORCEMENT AUTHORITY.**

21 (a) The Commodity Exchange Act (7 U.S.C. 1 et
22 seq.) is amended by inserting after section 4b the fol-
23 lowing:

1 **"SEC. 4b–1. ENFORCEMENT AUTHORITY.**

2 "(a) CFTC.—Except as provided in subsection (b),
3 the Commission shall have exclusive authority to enforce
4 the provisions of subtitle A of the Derivative Markets
5 Transparency and Accountability Act of 2009 with respect
6 to any person.

7 "(b) PRUDENTIAL REGULATORS.—The Prudential
8 Regulators shall have exclusive authority to enforce the
9 provisions of section 4s(d) and other prudential require-
10 ments of this Act with respect to banks, and branches or
11 agencies of foreign banks that are swap dealers or major
12 swap participants.

13 "(c) REFERRAL.—(1) If the Prudential Regulator for
14 a swap dealer or major swap participant has cause to be-
15 lieve that the swap dealer or major swap participant may
16 have engaged in conduct that constitutes a violation of the
17 nonprudential requirements of section 4s or rules adopted
18 by the Commission thereunder, that Prudential Regulator
19 may recommend in writing to the Commission that the
20 Commission initiate an enforcement proceeding as author-
21 ized under this Act. The recommendation shall be accom-
22 panied by a written explanation of the concerns giving rise
23 to the recommendation.

24 "(2) If the Commission has cause to believe that a
25 swap dealer or major swap participant that has a Pruden-
26 tial Regulator may have engaged in conduct that con-

1 stitutes a violation of the prudential requirements of sec-
2 tion 4s or rules adopted thereunder, the Commission may
3 recommend in writing to the Prudential Regulator that
4 the Prudential Regulator initiate an enforcement pro-
5 ceeding as authorized under this Act. The recommenda-
6 tion shall be accompanied by a written explanation of the
7 concerns given rise to the recommendation.''.
8 (b)(1) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
9 amended by adding at the end the following:
10 ''(3) DISRUPTIVE PRACTICES.—It shall be un-
11 lawful for any person to engage in any trading or
12 practice on or subject to the rules of a registered en-
13 tity that—
14 ''(A) violates bids and offers (intentionally
15 bidding at a price higher than the lowest offer,
16 or offering at a price lower than the highest
17 bid);
18 ''(B) is, is of the character of, or is com-
19 monly known to the trade as 'marking the
20 close' (bidding or offering during or near the
21 market's closing period with the intent to influ-
22 ence the settlement price);
23 ''(C) is, is of the character of, or is com-
24 monly known to the trade as 'spoofing' (bidding

1 or offering with the intent to cancel the bid or
2 offer before execution); or
3 "(D) constitutes uneconomic trading (trad-
4 ing that has no legitimate economic purpose but
5 for the effect on price).
6 "(4) The Commission may make and promul-
7 gate such rules and regulations as, in the judgment
8 of the Commission, are reasonably necessary to pro-
9 hibit any other trading practice that is disruptive of
10 fair and equitable trading.".
11 (2) The amendment made by paragraph (1) shall be-
12 come effective upon enactment.
13 **SEC. 3119. ENFORCEMENT.**
14 (a) Section 4b(a)(2) of the Commodity Exchange Act
15 (7 U.S.C. 6b(a)(2)) is amended by striking "or other
16 agreement, contract, or transaction subject to paragraphs
17 (1) and (2) of section 5a(g)," and inserting "or swap,".
18 (b) Section 4b(b) of such Act (7 U.S.C. 6b(b)) is
19 amended by striking "or other agreement, contract or
20 transaction subject to paragraphs (1) and (2) of section
21 5a(g)," and inserting "or swap,".
22 (c) Section 4c(a) of such Act (7 U.S.C. 6c(a)) is
23 amended by inserting "or swap" before "if the transaction
24 is used or may be used".

1 (d) Section 9(a)(2) of such Act (7 U.S.C. 13(a)(2))
2 is amended by inserting "or of any swap," before "or to
3 corner".
4 (e) Section 9(a)(4) of such Act (7 U.S.C. 13(a)(4))
5 is amended by inserting "swap repository," before "or fu-
6 tures association".
7 (f) Section 9(e)(1) of such Act (7 U.S.C. 13(e)(1))
8 is amended by inserting "swap repository," before "or reg-
9 istered futures association" and by inserting ", or swaps,"
10 before "on the basis".
11 (g) Section 8(b) of the Federal Deposit Insurance Act
12 (12 U.S.C. 1818(b)) is amended by redesignating para-
13 graphs (6) through (10) as paragraphs (7) through (11),
14 respectively, and inserting after paragraph (5) the fol-
15 lowing:
16 "(6) This section shall apply to any swap deal-
17 er, major swap participant, security-based swap
18 dealer, major security-based swap participant, de-
19 rivatives clearing organization, swap repository, se-
20 curity-based swap repository, or swap execution fa-
21 cility, whether or not it is an insured depository in-
22 stitution, for which the Board, the Corporation, or
23 the Office of the Comptroller of the Currency is the
24 appropriate Federal banking agency or Prudential

1 Regulator for purposes of the Derivative Markets
2 Transparency and Accountability Act of 2009.".

3 **SEC. 3120. RETAIL COMMODITY TRANSACTIONS.**

4 (a) Section 2(c) of the Commodity Exchange Act (7
5 U.S.C. 2(c)) is amended—

6 (1) in paragraph (1), by striking "(other than
7 section 5a (to the extent provided in section 5a(g)),
8 5b, 5d, or 12(e)(2)(B))" and inserting "(other than
9 section 5b or 12(e)(2)(B))"; and

10 (2) in paragraph (2), by inserting after sub-
11 paragraph (C) the following:

12 "(D) RETAIL COMMODITY TRANS-
13 ACTIONS.—

14 "(i) This subparagraph shall apply to,
15 and the Commission shall have jurisdiction
16 over, any agreement, contract, or trans-
17 action in any commodity that is—

18 "(I) entered into with, or offered
19 to (even if not entered into with), a
20 person that is not an eligible contract
21 participant or eligible commercial en-
22 tity; and

23 "(II) entered into, or offered
24 (even if not entered into), on a lever-
25 aged or margined basis, or financed

1 by the offeror, the counterparty, or a
2 person acting in concert with the of-
3 feror or counterparty on a similar
4 basis.
5 "(ii) Clause (i) shall not apply to—
6 "(I) an agreement, contract, or
7 transaction described in paragraph (1)
8 or subparagraphs (A), (B), or (C), in-
9 cluding any agreement, contract, or
10 transaction specifically excluded from
11 subparagraph (A), (B), or (C);
12 "(II) any security;
13 "(III) a contract of sale that—
14 "(aa) results in actual deliv-
15 ery within 28 days or such other
16 longer period as the Commission
17 may determine by rule or regula-
18 tion based upon the typical com-
19 mercial practice in cash or spot
20 markets for the commodity in-
21 volved; or
22 "(bb) creates an enforceable
23 obligation to deliver between a
24 seller and a buyer that have the
25 ability to deliver and accept deliv-

1 ery, respectively, in connection
2 with their line of business.
3 "(IV) an agreement, contract, or
4 transaction that is listed on a national
5 securities exchange registered under
6 section 6(a) of the Securities Ex-
7 change Act of 1934 (15 U.S.C.
8 78f(a)); or
9 "(V) an identified banking prod-
10 uct, as defined in section 402(b) of
11 the Legal Certainty for Bank Prod-
12 ucts Act of 2000 (7 U.S.C. 27(b)).
13 "(iii) Sections 4(a), 4(b) and 4b shall
14 apply to any agreement, contract or trans-
15 action described in clause (i), that is not
16 excluded from clause (i) by clause (ii), as
17 if the agreement, contract, or transaction
18 were a contract of sale of a commodity for
19 future delivery.
20 "(iv) This subparagraph shall not be
21 construed to limit any jurisdiction that the
22 Commission may otherwise have under any
23 other provision of this Act over an agree-
24 ment, contract, or transaction that is a

1 contract of sale of a commodity for future
2 delivery;
3 "(v) This subparagraph shall not be
4 construed to limit any jurisdiction that the
5 Commission or the Securities and Ex-
6 change Commission may otherwise have
7 under any other provisions of this Act with
8 respect to security futures products and
9 persons effecting transactions in security
10 futures products;
11 "(vi) For the purposes of this sub-
12 paragraph, an agricultural producer, pack-
13 er, or handler shall be considered an eligi-
14 ble commercial entity for any agreement,
15 contract, or transaction for a commodity in
16 connection with its line of business.".
17 (b) The amendments made by subsection (a) shall be-
18 come effective on the date of the enactment of this section.
19 **SEC. 3121. LARGE SWAP TRADER REPORTING.**
20 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
21 is amended by inserting after section 4s (as added by sec-
22 tion 3107 of this Act) the following:

1 **"SEC. 4t. LARGE SWAP TRADER REPORTING.**

2 "(a) It shall be unlawful for any person to enter into
3 any swap that performs or affects a significant price dis-
4 covery function with respect to registered entities if—

5 "(1) the person directly or indirectly enters into
6 such swaps during any 1 day in an amount equal to
7 or in excess of such amount as shall be fixed from
8 time to time by the Commission; and

9 "(2) such person directly or indirectly has or
10 obtains a position in such swaps equal to or in ex-
11 cess of such amount as shall be fixed from time to
12 time by the Commission,

13 unless the person files or causes to be filed with the prop-
14 erly designated officer of the Commission such reports re-
15 garding any transactions or positions described in para-
16 graphs (1) and (2) as the Commission may by rule or reg-
17 ulation require and unless, in accordance with the rules
18 and regulations of the Commission, the person keeps
19 books and records of all such swaps and any transactions
20 and positions in any related commodity traded on or sub-
21 ject to the rules of any board of trade, and of cash or
22 spot transactions in, inventories of, and purchase and sale
23 commitments of, such a commodity.

24 "(b) The books and records shall show complete de-
25 tails concerning all transactions and positions as the Com-
26 mission may by rule or regulation prescribe.

1 "(c) The books and records shall be open at all times
2 to inspection and examination by any representative of the
3 Commission.
4 "(d) For the purpose of this subsection, the swaps,
5 futures and cash or spot transactions and positions of any
6 person shall include the transactions and positions of any
7 persons directly or indirectly controlled by the person.
8 "(e) In making a determination whether a swap per-
9 forms or affects a significant price discovery function with
10 respect to regulated markets, the Commission shall con-
11 sider the factors set forth in section 4a(a)(3).".

12 **SEC. 3122. SEGREGATION OF ASSETS HELD AS COLLAT-**
13 **ERAL IN SWAP TRANSACTIONS.**

14 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
15 is further amended by inserting after section 4t the fol-
16 lowing:

17 **"SEC. 4u. SEGREGATION OF ASSETS HELD AS COLLATERAL**
18 **IN OVER-THE-COUNTER SWAP TRANS-**
19 **ACTIONS.**

20 "(a) SEGREGATION.—At the request of a swap
21 counterparty who provides funds or other property to a
22 swap dealer initial margin or collateral to secure the obli-
23 gations of the counterparty under a swap between the
24 counterparty and the swap dealer that is not submitted
25 for clearing to a derivatives clearing organization, the

1 swap dealer shall segregate the funds or other property
2 for the benefit of the counterparty, and maintain the ini-
3 tial margin or collateral in an account which is carried
4 by an independent third-party custodian and designated
5 as a segregated account for the counterparty, in accord-
6 ance with such rules and regulations as the Commission
7 or Prudential Regulator may prescribe. If a swap
8 counterparty is a swap dealer or major swap participant
9 who owns more than 20 percent of, or has more than 50
10 percent representation on the board of directors of a cus-
11 todian, the custodian shall not be considered independent
12 from the swap counterparties for purposes of the pre-
13 ceding sentence. This subsection shall not be interpreted
14 to preclude commercial arrangements regarding the in-
15 vestment of the segregated funds or other property and
16 the related allocation of gains and losses resulting from
17 any such investment.

18 "(b) FURTHER AUDIT REPORTING.—If a swap dealer
19 does not segregate funds pursuant to the request of a
20 swap counterparty in accordance with subsection (a), the
21 swap dealer shall report to its counterparty on a quarterly
22 basis that its procedures relating to margin and collateral
23 requirements are in compliance with the agreement of the
24 counterparties.".

1 **SEC. 3123. OTHER AUTHORITY.**

2 Unless otherwise provided by its terms, this subtitle
3 does not divest any appropriate Federal banking agency,
4 the Commission, the Securities and Exchange Commis-
5 sion, or other Federal or State agency, of any authority
6 derived from any other applicable law.

7 **SEC. 3124. ANTITRUST.**

8 Nothing in the amendments made by this subtitle
9 shall be construed to modify, impair, or supersede the op-
10 eration of any of the antitrust laws. For purposes of this
11 subtitle, the term "antitrust laws" has the same meaning
12 given the term in subsection (a) of the first section of the
13 Clayton Act, except that the term includes section 5 of
14 the Federal Trade Commission Act to the extent that such
15 section 5 applies to unfair methods of competition.

16 **SEC. 3125. REVIEW OF PRIOR ACTIONS.**

17 Notwithstanding any other provision of the Com-
18 modity Exchange Act, the Commodity Futures Trading
19 Commission shall review, as appropriate, all regulations,
20 rules, exemptions, exclusions, guidance, no action letters,
21 orders, other actions taken by or on behalf of the Commis-
22 sion, and any action taken pursuant to the Commodity
23 Exchange Act by an exchange, self-regulatory organiza-
24 tion, or any other registered entity, that are currently in
25 effect, to ensure that such prior actions are in compliance
26 with the provisions of this title.

1 **SEC. 3126. EXPEDITED PROCESS.**

2 The Commodity Futures Trading Commission may
3 use emergency and expedited procedures (including any
4 administrative or other procedure as appropriate) to carry
5 out this title if, in its discretion, it deems it necessary to
6 do so.

7 **SEC. 3127. EFFECTIVE DATE.**

8 (a) Unless otherwise provided, the provisions of this
9 subtitle shall become effective the later of 270 days after
10 the date of the enactment of this subtitle or, to the extent
11 a provision of this subtitle requires rulemaking, no less
12 than 60 days after publication of a final rule or regulation
13 implementing such provision of this subtitle.

14 (b) Subsection (a) shall not preclude the Commodity
15 Futures Trading Commission from any rulemaking re-
16 quired or directed under this subtitle to implement the
17 provisions of this subtitle.

18 Subtitle B—Regulation of Security-
19 Based Swap Markets

20 **SEC. 3201. DEFINITIONS UNDER THE SECURITIES EX-**
21 **CHANGE ACT OF 1934.**

22 (a) DEFINITIONS.—Section 3(a) of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78c(a)) is amended—

24 (1) in paragraph (5)(A) and (B), by inserting
25 "(but not security-based swaps, other than security-
26 based swaps with or for persons that are not eligible

1 contract participants)" after the word "securities"
2 in each place it appears;
3 (2) in paragraph (10), by inserting "security-
4 based swap," after "security future,";
5 (3) in paragraph (13), by adding at the end the
6 following: "For security-based swaps, such terms in-
7 clude the execution, termination (prior to its sched-
8 uled maturity date), assignment, exchange, or simi-
9 lar transfer or conveyance of, or extinguishing of
10 rights or obligations under, a security-based swap,
11 as the context may require.";
12 (4) in paragraph (14), by adding at the end the
13 following: "For security-based swaps, such terms in-
14 clude the execution, termination (prior to its sched-
15 uled maturity date), assignment, exchange, or simi-
16 lar transfer or conveyance of, or extinguishing of
17 rights or obligations under, a security-based swap,
18 as the context may require.";
19 (5) in paragraph (39)—
20 (A) by striking "or government securities
21 dealer" and adding "government securities
22 dealer, security-based swap dealer or major se-
23 curity-based swap participant" in its place in
24 subparagraph (B)(i)(I);

1 (B) by adding "security-based swap dealer,
2 major security-based swap participant," after
3 "government securities dealer," in subpara-
4 graph (B)(i)(II);
5 (C) by striking "or government securities
6 dealer" and adding "government securities
7 dealer, security-based swap dealer or major se-
8 curity-based swap participant" in its place in
9 subparagraph (C); and
10 (D) by adding "security-based swap dealer,
11 major security-based swap participant," after
12 "government securities dealer," in subpara-
13 graph (D); and
14 (6) by adding at the end the following:
15 "(65) ELIGIBLE CONTRACT PARTICIPANT.—The
16 term 'eligible contract participant' has the same
17 meaning as in section 1a(12) of the Commodity Ex-
18 change Act (7 U.S.C. 1a(12)).
19 "(66) MAJOR SWAP PARTICIPANT.—The term
20 'major swap participant' has the same meaning as in
21 section 1a(39) of the Commodity Exchange Act (7
22 U.S.C. 1a(39)).
23 "(67) MAJOR SECURITY-BASED SWAP PARTICI-
24 PANT.—

1 "(A) IN GENERAL.—The term 'major secu-
2 rity-based swap participant' means any person
3 who is not a security-based swap dealer, and—
4 "(i) maintains a substantial net posi-
5 tion in outstanding security-based swaps,
6 excluding positions held primarily for hedg-
7 ing, reducing or otherwise mitigating its
8 commercial risk, including operating and
9 balance sheet risk; or
10 "(ii) whose outstanding security-based
11 swaps create substantial net counterparty
12 exposure among the aggregate of its
13 counterparties that could expose those
14 counterparties to significant credit losses.
15 "(B) DEFINITION OF 'SUBSTANTIAL NET
16 POSITION'.—The Commission shall define by
17 rule or regulation the terms 'substantial net po-
18 sition', 'substantial net counterparty exposure',
19 and 'significant credit losses' at thresholds that
20 the Commission determines prudent for the ef-
21 fective monitoring, management and oversight
22 of entities which are systemically important or
23 can significantly impact the financial system
24 through counterparty credit risk. In setting the
25 definitions, the Commission shall consider the

1 person's relative position in uncleared as op-
2 posed to cleared swaps.
3 "(C) A person may be designated a major
4 security-based swap participant for 1 or more
5 individual types of security-based swaps without
6 being classified as a major security-based swap
7 participant for all classes of security-based
8 swaps.
9 "(68) SECURITY-BASED SWAP.—
10 "(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term 'security-based
12 swap' means any agreement, contract, or trans-
13 action that would be a swap under section
14 1a(35) of the Commodity Exchange Act, and
15 that—
16 "(i) is priumarily based on an index
17 that is a narrow-based security index, in-
18 cluding any interest therein or based on
19 the value thereof;
20 "(ii) is primarily based on a single se-
21 curity or loan, including any interest there-
22 in or based on the value thereof; or
23 "(iii) is primarily based on the occur-
24 rence, non-occurrence, or extent of the oc-
25 currence of an event relating to a single

1 issuer of a security or the issuers of securi-
2 ties in a narrow-based security index, pro-
3 vided that such event must directly affect
4 the financial statements, financial condi-
5 tion, or financial obligations of the issuer.
6 "(B) RULE OF CONSTRUCTION REGARDING
7 MASTER AGREEMENTS.—The term 'security-
8 based swap' shall be construed to include a
9 master agreement that provides for an agree-
10 ment, contract, or transaction that is a secu-
11 rity-based swap pursuant to subparagraph (A),
12 together with all supplements to any such mas-
13 ter agreement, without regard to whether the
14 master agreement contains an agreement, con-
15 tract, or transaction that is not a security-based
16 swap pursuant to subparagraph (A), except
17 that the master agreement shall be considered
18 to be a security-based swap only with respect to
19 each agreement, contract, or transaction under
20 the master agreement that is a security-based
21 swap pursuant to subparagraph (A).
22 "(C) EXCLUSION.—The term 'security-
23 based swap' does not include any agreement,
24 contract, or transaction that meets the defini-
25 tion of a security-based swap only because it

1 references, is based upon, or settles through the
2 transfer, delivery, or receipt of an exempted se-
3 curity under section 3(a)(12) of the Securities
4 Exchange Act of 1934 as in effect on the date
5 of enactment of the Futures Trading Act of
6 1982 (other than any municipal security as de-
7 fined in section 3(a)(29) as in effect on the date
8 of enactment of the Futures Trading Act of
9 1982), unless such agreement, contract, or
10 transaction is of the character of, or is com-
11 monly known in the trade as, a put, call, or
12 other option.

13 "(69) SWAP.—The term 'swap' has the same
14 meaning as in section 1a(35) of the Commodity Ex-
15 change Act (7 U.S.C. 1a(35)).

16 "(70) PERSON ASSOCIATED WITH A SECURITY-
17 BASED SWAP DEALER OR MAJOR SECURITY-BASED
18 SWAP PARTICIPANT.—The term 'person associated
19 with a security-based swap dealer or major security-
20 based swap participant' or 'associated person of a
21 security-based swap dealer or major security-based
22 swap participant' means any partner, officer, direc-
23 tor, or branch manager of such security-based swap
24 dealer or major security-based swap participant (or
25 any person occupying a similar status or performing

1 similar functions), any person directly or indirectly
2 controlling, controlled by, or under common control
3 with such security-based swap dealer or major secu-
4 rity-based swap participant, or any employee of such
5 security-based swap dealer or major security-based
6 swap participant, except that any person associated
7 with a security-based swap dealer or major security-
8 based swap participant whose functions are solely
9 clerical or ministerial shall not be included in the
10 meaning of such term other than for purposes of
11 section 15F(e)(2).
12 "(71) SECURITY-BASED SWAP DEALER.—
13 "(A) IN GENERAL.—The term 'security-
14 based swap dealer' means any person that—
15 "(i) holds itself out as a dealer in se-
16 curity-based swaps;
17 "(ii) makes a market in security-based
18 swaps;
19 "(iii) regularly engages in the pur-
20 chase of security-based swaps and their re-
21 sale to customers in the ordinary course of
22 a business; or
23 "(iv) engages in any activity causing
24 it to be commonly known in the trade as

1 a dealer or market maker in security-based
2 swaps.
3 "(B) DESIGNATION BY TYPE OR CLASS.—
4 A person may be designated a security-based
5 swap dealer for a single type or single class or
6 category of security-based swap and considered
7 not a security-based swap dealer for other
8 types, classes, or categories of security-based
9 swaps.
10 "(C) DE MINIMUS EXCEPTION.—The Com-
11 mission shall make a determination to exempt
12 from designation as a security-based swap deal-
13 er an entity that engages in a de minimus
14 amount of security-based swap dealing in con-
15 nection with transactions with or on the behalf
16 of its customers.
17 "(72) APPROPRIATE FEDERAL BANKING AGEN-
18 CY.—The term 'appropriate Federal banking agency'
19 has the same meaning as in section 3(q) of the Fed-
20 eral Deposit Insurance Act (12 U.S.C. 1813(q)).
21 "(73) BOARD.—The term 'Board' means the
22 Board of Governors of the Federal Reserve System.
23 "(74) PRUDENTIAL REGULATOR.—The term
24 'Prudential Regulator' means—

1 "(A) the Board in the case of a swap deal-
2 er, major swap participant, security-based swap
3 dealer or major security-based swap participant
4 that is—
5 "(i) a State-chartered bank that is a
6 member of the Federal Reserve System; or
7 "(ii) a State-chartered branch or
8 agency of a foreign bank;
9 "(B) the Office of the Comptroller of the
10 Currency in the case of a swap dealer, major
11 swap participant, security-based swap dealer or
12 major security-based swap participant that is—
13 "(i) a national bank; or
14 "(ii) a federally chartered branch or
15 agency of a foreign bank; and
16 "(C) the Federal Deposit Insurance Cor-
17 poration in the case of a swap dealer, major
18 swap participant, security-based swap dealer or
19 major security-based swap participant that is a
20 state-chartered bank that is not a member of
21 the Federal Reserve System.
22 "(75) SWAP DEALER.—The term 'swap dealer'
23 has the same meaning as in section 1a(38) of the
24 Commodity Exchange Act (7 U.S.C. 1a(38)).
25 "(76) SECURITY-BASED SWAP AGREEMENT.—

1 "(A) IN GENERAL.—For purposes of sec-
2 tions 10, 16, 20, and 21A of this Act, and sec-
3 tion 17 of the Securities Act of 1933 (15
4 U.S.C. 77q), the term 'security-based swap
5 agreement' means a swap agreement as defined
6 in section 206A of the Gramm-Leach-Bliley Act
7 (15 U.S.C. 78c note) of which a material term
8 is based on the price, yield, value, or volatility
9 of any security or any group or index of securi-
10 ties, or any interest therein.
11 "(B) EXCLUSIONS.—The term 'security-
12 based swap agreement' does not include any se-
13 curity-based swap.
14 "(76) SECURITY-BASED SWAP REPOSITORY.—
15 The term 'security-based swap repository' means any
16 person that collects, calculates, prepares or main-
17 tains information or records with respect to trans-
18 actions or positions in, or the terms and conditions
19 of, security-based swaps entered into by third par-
20 ties.
21 "(77) SWAP EXECUTION FACILITY.—The term
22 'swap execution facility' means a person or entity
23 that facilitates the execution or trading of security-
24 based swaps between two persons through any
25 means of interstate commerce, but which is not a

1 national securities exchange, including any electronic
2 trade execution or voice brokerage facility.''.' '''.
3 (b) AUTHORITY TO FURTHER DEFINE TERMS.—The
4 Securities and Exchange Commission may adopt a rule
5 further defining the terms ''security-based swap'', ''secu-
6 rity-based swap dealer'', ''major security-based swap par-
7 ticipant'', and ''eligible contract participant'' with regard
8 to security-based swaps (as such terms are defined in the
9 amendments made by subsection (a)) for the purpose of
10 including transactions and entities that have been struc-
11 tured to evade this title.

12 **SEC. 3202. REPEAL OF PROHIBITION ON REGULATION OF**
13 **SECURITY-BASED SWAPS.**

14 (a) REPEAL OF LAW.—Section 206B of the Gramm-
15 Leach-Bliley Act (15 U.S.C. 78c note) is repealed.
16 (b) CONFORMING AMENDMENTS TO THE SECURITIES
17 ACT OF 1933.—
18 (1) Section 2A(b) of the Securities Act of 1933
19 (15 U.S.C. 77b–1) is amended by striking ''(as de-
20 fined in section 206B of the Gramm-Leach-Bliley
21 Act)'' each place that such term appears.
22 (2) Section 17 of the Securities Act of 1933 (15
23 U.S.C. 77q) is amended—
24 (A) in subsection (a)—

1 (i) by inserting "(including security-
2 based swaps)" after "securities"; and
3 (ii) by striking "206B of the Gramm-
4 Leach-Bliley Act" and inserting "3(a)(76)
5 of the Securities Exchange Act of 1934";
6 and
7 (B) in subsection (d), by striking "206B of
8 the Gramm-Leach-Bliley Act" and inserting
9 "3(a)(76) of the Securities Exchange Act of
10 1934".
11 (c) CONFORMING AMENDMENTS TO THE SECURITIES
12 EXCHANGE ACT OF 1934.—The Securities Exchange Act
13 of 1934 (15 U.S.C. 78a, et seq.) is amended as follows:
14 (1) Section 3A (15 U.S.C. 78c–1) is amended
15 by striking "(as defined in section 206B of the
16 Gramm-Leach-Bliley Act)" each place that the term
17 appears.
18 (2) Section 9(a) (15 U.S.C. 78i(a)) is amended
19 by striking paragraphs (2) through (5) and insert-
20 ing:
21 "(2) To effect, alone or with one or more other per-
22 sons, a series of transactions in any security registered
23 on a national securities exchange or in connection with
24 any security-based swap or security-based swap agreement
25 with respect to such security creating actual or apparent

1 active trading in such security, or raising or depressing
2 the price of such security, for the purpose of inducing the
3 purchase or sale of such security by others.

4 "(3) If a dealer, broker, security-based swap dealer,
5 major security-based swap participant or other person sell-
6 ing or offering for sale or purchasing or offering to pur-
7 chase the security, or a security-based swap or security-
8 based swap agreement with respect to such security, to
9 induce the purchase or sale of any security registered on
10 a national securities exchange or any security-based swap
11 or security-based swap agreement with respect to such se-
12 curity by the circulation or dissemination in the ordinary
13 course of business of information to the effect that the
14 price of any such security will or is likely to rise or fall
15 because of market operations of any one or more persons
16 conducted for the purpose of raising or depressing the
17 price of such security.

18 "(4) If a dealer, broker, security-based swap dealer,
19 major security-based swap participant or other person sell-
20 ing or offering for sale or purchasing or offering to pur-
21 chase the security, or a security-based swap or security-
22 based swap agreement with respect to such security, to
23 make, regarding any security registered on a national se-
24 curities exchange or any security-based swap or security-
25 based swap agreement with respect to such security, for

1 the purpose of inducing the purchase or sale of such secu-
2 rity or such security-based swap or security-based swap
3 agreement, any statement which was at the time and in
4 the light of the circumstances under which it was made,
5 false or misleading with respect to any material fact, and
6 which he knew or had reasonable ground to believe was
7 so false or misleading.

8 "(5) For a consideration, received directly or indi-
9 rectly from a dealer, broker, security-based swap dealer,
10 major security-based swap participant or other person sell-
11 ing or offering for sale or purchasing or offering to pur-
12 chase the security, or a security-based swap or security-
13 based swap agreement with respect to such security, to
14 induce the purchase of any security registered on a na-
15 tional securities exchange or any security-based swap or
16 security-based swap agreement with respect to such secu-
17 rity by the circulation or dissemination of information to
18 the effect that the price of any such security will or is
19 likely to rise or fall because of the market operations of
20 any one or more persons conducted for the purpose of rais-
21 ing or depressing the price of such security.".

22 (3) Section 9(i) (15 U.S.C. 78i(i)) is amended
23 by striking "(as defined in section 206B of the
24 Gramm-Leach-Bliley Act)";

1 (4) Section 10 (15 U.S.C. 78j) is amended by
2 striking "(as defined in section 206B of the Gramm-
3 Leach-Bliley Act)" each place that the term appears.
4 (5) Section 15(c)(1) is amended—
5 (A) in subparagraph (A), by striking ", or
6 any security-based swap agreement (as defined
7 in section 206B of the Gramm-Leach-Bliley
8 Act),"; and
9 (B) in subparagraphs (B) and (C), by
10 striking "agreement (as defined in section 206B
11 of the Gramm-Leach-Bliley Act)" in each place
12 that the term appears.
13 (6) Section 15(i) (15 U.S.C. 78o(i), as added
14 by section 303(f) of the Commodity Futures Mod-
15 ernization Act of 2000 (Public Law 106–554; 114
16 Stat. 2763A–455) is amended by striking "(as de-
17 fined in section 206B of the Gramm-Leach-Bliley
18 Act)".
19 (7) Section 16 (15 U.S.C. 78p) is amended—
20 (A) in subsection (a)(2)(C), by striking
21 "(as defined in section 206(b) of the Gramm-
22 Leach-Bliley Act (15 U.S.C. 78c note))";
23 (B) in subsection (b), by striking "(as de-
24 fined in section 206B of the Gramm-Leach-Bli-

1 ley Act)" in each place that the term appears;
2 and
3 (C) in subsection (g), by striking "(as de-
4 fined in section 206B of the Gramm-Leach-Bli-
5 ley Act)";
6 (8) Section 20 (15 U.S.C. 78t) is amended—
7 (A) in subsection (d), by striking "(as de-
8 fined in section 206B of the Gramm-Leach-Bli-
9 ley Act)"; and
10 (B) in subsection (f), by striking "(as de-
11 fined in section 206B of the Gramm-Leach-Bli-
12 ley Act)"; and
13 (9) Section 21A (15 U.S.C. 78u–1) is amend-
14 ed—
15 (A) in subsection (a)(1), by striking "(as
16 defined in section 206B of the Gramm-Leach-
17 Bliley Act)"; and
18 (B) in subsection (g), by striking "(as de-
19 fined in section 206B of the Gramm-Leach-Bli-
20 ley Act)".
21 **SEC. 3203. AMENDMENTS TO THE SECURITIES EXCHANGE**
22 **ACT OF 1934.**
23 (a) CLEARING FOR SECURITY-BASED SWAPS.—The
24 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)

1 is amended by adding the following section after section
2 3A:

3 **"SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.**

4 "(a) IN GENERAL.—

5 "(1) STANDARD FOR CLEARING.—A security-
6 based swap shall be submitted for clearing if a clear-
7 ing agency that is registered under this Act will ac-
8 cept the security-based swap for clearing, and the
9 Commission has determined under paragraph
10 (2)(B)(ii) of subsection (b) that the security-based
11 swap is required to be cleared.

12 "(2) OPEN ACCESS.—The rules of a clearing
13 agency described in paragraph (1) shall—

14 "(A) prescribe that all security-based
15 swaps submitted to the clearing agency with the
16 same terms and conditions are economically
17 equivalent within the clearing agency and may
18 be offset with each other within the clearing
19 agency; and

20 "(B) provide for non-discriminatory clear-
21 ing of a security-based swap executed bilaterally
22 or on or through the rules of an unaffiliated na-
23 tional securities exchange or swap execution fa-
24 cility.

25 "(b) COMMISSION REVIEW.—

1 "(1) COMMISSION-INITIATED REVIEW.—

2 "(A) The Commission shall review each se-
3 curity-based swap, or any group, category, type
4 or class of security-based swaps to make a de-
5 termination that such security-based swap, or
6 group, category, type or class of security-based
7 swaps should be required to be cleared.

8 "(B) The Commission shall provide at
9 least a 30-day public comment period regarding
10 any determination under subparagraph (A).

11 "(2) SWAP SUBMISSIONS.—

12 "(A) A clearing agency shall submit to the
13 Commission each security-based swap, or any
14 group, category, type or class of security-based
15 swaps that it plans to accept for clearing and
16 provide notice to its members (in a manner to
17 be determined by the Commission) of such sub-
18 mission.

19 "(B) The Commission shall—

20 "(i) make available to the public any
21 submission received under subparagraph
22 (A);

23 "(ii) review each submission made
24 under subparagraph (A), and determine
25 whether the security-based swap, or group,

1 category, type, or class of security-based
2 swaps, described in the submission is re-
3 quired to be cleared; and
4 "(iii) provide at least a 30-day public
5 comment period regarding its determina-
6 tion whether the clearing requirement
7 under subsection (a)(1) shall apply to the
8 submission.
9 "(3) DEADLINE.—The Commission shall make
10 its determination under paragraph (2)(B) not later
11 than 90 days after receiving a submission made
12 under paragraph (2)(A), unless the submitting clear-
13 ing agency agrees to an extension for the time limi-
14 tation established under this paragraph.
15 "(4) DETERMINATION.—
16 "(A) In reviewing a submission made
17 under paragraph (2), the Commission shall re-
18 view whether the submission is consistent with
19 section 5b(c)(2).
20 "(B) In reviewing a security-based swap,
21 group of security-based swaps or class of secu-
22 rity-based swaps pursuant to paragraph (1) or
23 a submission made under paragraph (2), the
24 Commission shall take into account the fol-
25 lowing factors:

1 "(i) The existence of significant out-
2 standing notional exposures, trading liquid-
3 ity and adequate pricing data.
4 "(ii) The availability of rule frame-
5 work, capacity, operational expertise and
6 resources, and credit support infrastruc-
7 ture to clear the contract on terms that are
8 consistent with the material terms and
9 trading conventions on which the contract
10 is then traded.
11 "(iii) The effect on the mitigation of
12 systemic risk, taking into account the size
13 of the market for such contract and the re-
14 sources of the clearing agency available to
15 clear the contract.
16 "(iv) The effect on competition, in-
17 cluding appropriate fees and charges ap-
18 plied to clearing.
19 "(v) The existence of reasonable legal
20 certainty in the event of the insolvency of
21 the relevant clearing agency or 1 or more
22 of its clearing members with regard to the
23 treatment of customer and security-based
24 swap counterparty positions, funds, and
25 property.

1 "(C) In making a determination under
2 paragraph (2)(B) that the clearing requirement
3 shall apply, the Commission may require such
4 terms and conditions to the requirement as the
5 Commission determines to be appropriate.
6 "(5) RULES.—Not later than 1 year after the
7 date of the enactment of the Derivative Markets
8 Transparency and Accountability Act of 2009, the
9 Commission shall adopt rules for a clearing agency's
10 submission for review, pursuant to this subsection,
11 of a security-based swap, or a group, category, type
12 or class of security-based swaps, that it seeks to ac-
13 cept for clearing.
14 "(c) STAY OF CLEARING REQUIREMENT.—
15 "(1) After an determination pursuant to sub-
16 section (b)(2), the Commission, on application of a
17 counterparty to a security-based swap or on its own
18 initiative, may stay the clearing requirement of sub-
19 section (a)(1) until the Commission completes a re-
20 view of the terms of the security-based swap (or the
21 group, category, type or class of security-based
22 swaps) and the clearing arrangement.
23 "(2) DEADLINE.—The Commission shall com-
24 plete a review undertaken pursuant to paragraph (1)
25 not later than 90 days after issuance of the stay, un-

1 less the clearing agency that clears the security-
2 based swap, or group, category, type or class of se-
3 curity-based swaps, agrees to an extension of the
4 time limitation established under this paragraph.
5 "(3) DETERMINATION.—Upon completion of
6 the review undertaken pursuant to paragraph (1),
7 the Commission may—
8 "(A) determine, unconditionally or subject
9 to such terms and conditions as the Commis-
10 sion determines to be appropriate, that the se-
11 curity-based swap, or group, category, type or
12 class of security-based swaps, must be cleared
13 pursuant to this subsection if it finds that such
14 clearing is consistent with subsection (b)(4); or
15 "(B) determine that the clearing require-
16 ment of subsection (a)(1) shall not apply to the
17 security-based swap, or group, category, type or
18 class of security-based swaps.
19 "(4) RULES.—Not later than 1 year after the
20 date of the enactment of the Derivative Markets
21 Transparency and Accountability Act of 2009, the
22 Commission shall adopt rules for reviewing, pursu-
23 ant to this subsection, a clearing agency's clearing of
24 a security-based swap, or a group, category, type or

1 class of security-based swaps, that it has accepted
2 for clearing.
3 "(d) PREVENTION OF EVASION.—The Commission
4 may prescribe rules under this subsection, or issue inter-
5 pretations of the rules, as necessary to prevent evasions
6 of this section.
7 "(e) REQUIRED REPORTING.—
8 "(1) IN GENERAL.—All security-based swaps
9 that are not accepted for clearing by any clearing
10 agency shall be reported either to a security-based
11 swap repository described in subsection 13(n) or, if
12 there is no security-based swap repository that
13 would accept the security-based swap, to the Com-
14 mission pursuant to section 13A within such time
15 period as the Commission may by rule or regulation
16 prescribe. Counterparties to a security-based swap
17 may agree which counterparty will report the secu-
18 rity-based swap as required by this paragraph.
19 "(2) SWAP DEALER DESIGNATION.—With re-
20 gard to security-based swaps where only 1
21 counterparty is a security-based swap dealer, the se-
22 curity-based swap dealer shall report the security-
23 based swap as required by this subsection.

1 "(f) REPORTING TRANSITION RULES.—Rules adopt-
2 ed by the Commission under this section shall provide for
3 the reporting of data, as follows:
4 "(1) Security-based swaps entered into before
5 the date of the enactment of this section shall be re-
6 ported to a registered security-based swap repository
7 or the Commission no later than 180 days after the
8 effective date of this section; and
9 "(2) Security-based swaps entered into on or
10 after such date of enactment shall be reported to a
11 registered security-based swap repository or the
12 Commission no later than the later of—
13 "(A) 90 days after such effective date; or
14 "(B) such other time after entering into
15 the security-based swap as the Commission may
16 prescribe by rule or regulation.
17 "(g) CLEARING TRANSITION RULES.—
18 "(1) Security-based swaps entered into before
19 the date of the enactment of this section are exempt
20 from the clearing requirements of this subsection if
21 reported pursuant to subsection (f)(1).
22 "(2) Security-based swaps entered into before
23 application of the clearing requirement pursuant to
24 this section are exempt from the clearing require-

1 ments of this section if reported pursuant to sub-
2 section (f)(2).
3 "(h) EXCEPTIONS.—
4 "(1) IN GENERAL.—The requirements of sub-
5 section (a)(1) shall not apply to a security-based
6 swap if one of the counterparties to the security-
7 based swap—
8 "(A) is not a security-based swap dealer or
9 major security-based swap participant; and
10 "(B) is using security-based swaps to
11 hedge or mitigate commercial risk, including
12 operating or balance sheet risk; and
13 "(C) notifies the Commission, in a manner
14 set forth by the Commission, how it generally
15 meets its financial obligations associated with
16 entering into non-cleared security-based swaps.
17 "(2) ABUSE OF EXCEPTION.—The Commission
18 may prescribe rules under this subsection, or issue
19 interpretations of the rules, as necessary to prevent
20 abuse of the exemption in paragraph (1) by security-
21 based swap dealers and major security-based swap
22 participants.
23 "(3) OPTION TO CLEAR.—The application of
24 the clearing exception in paragraph (1) is solely at
25 the discretion the counterparty to the swap that

1 meets the conditions of subparagraphs (A) through
2 (C) of paragraph (1).".
3 (b) CLEARING AGENCY REQUIREMENTS.—Section
4 17A of the Securities Exchange Act of 1934 (15 U.S.C.
5 78q) is amended by adding at the end the following new
6 subsections:
7 "(g) REGISTRATION REQUIREMENT.—It shall be un-
8 lawful for a clearing agency, unless registered with the
9 Commission, directly or indirectly to make use of the mails
10 or any means or instrumentality of interstate commerce
11 to perform the functions of a clearing agency with respect
12 to a swap.
13 "(h) VOLUNTARY REGISTRATION.—A person that
14 clears agreements, contracts, or transactions that are not
15 required to be cleared under this Act may register with
16 the Commission as a clearing agency.
17 "(i) EXISTING BANKS AND DERIVATIVES CLEARING
18 ORGANIZATIONS.—A bank or a derivatives clearing orga-
19 nization registered with the Commodity Futures Trading
20 Commission under the Commodity Exchange Act required
21 to be a registered as a clearing agency under this title,
22 solely because it clears security-based swaps, is deemed to
23 be a registered clearing agency under this title solely for
24 the purpose of clearing security-based swaps to the extent
25 that the bank cleared security-based swaps, as defined in

1 this Act, as a multilateral clearing organization or the de-
2 rivatives clearing organization cleared security-based
3 swaps, as defined in this title pursuant to an exemption
4 from registration as a clearing agency, before the enact-
5 ment of this section. A bank or derivative clearing organi-
6 zation to which this subsection applies shall continue to
7 comply with the requirements in section 17A(b)(3) of this
8 title. A bank to which this subsection applies may, by the
9 vote of the shareholders owning not less than 51 percent
10 of the voting interests of such bank, be converted into a
11 State corporation, partnership, limited liability company,
12 or other similar legal form pursuant to a plan of conver-
13 sion, if the conversion is not in contravention of applicable
14 State law.

15 "(j) REPORTING.—

16 "(1) IN GENERAL.—A clearing agency that
17 clears security-based swaps shall provide to the
18 Commission all information determined by the Com-
19 mission to be necessary to perform its responsibil-
20 ities under this Act. The Commission shall adopt
21 data collection and maintenance requirements for se-
22 curity-based swaps cleared by clearing agencies that
23 are comparable to the corresponding requirements
24 for security-based swaps accepted by security-based
25 swap repositories and security-based swaps traded

1 on swap execution facilities. Subject to section 24,
2 the Commission shall share such information, upon
3 request, with the Board, the Commodity Futures
4 Trading Commission, the appropriate Federal bank-
5 ing agencies, the Financial Services Oversight Coun-
6 cil, and the Department of Justice or to other per-
7 sons the Commission deems appropriate, including
8 foreign financial supervisors (including foreign fu-
9 tures authorities), foreign central banks, and foreign
10 ministries.

11 "(2) PUBLIC INFORMATION.—A clearing agency
12 that clears security-based swaps shall provide to the
13 Commission, or its designee, such information as is
14 required by, and in a form and at a frequency to be
15 determined by, the Commission, in order to comply
16 with the public reporting requirements contained in
17 section 13.

18 "(k) DESIGNATION OF COMPLIANCE OFFICER.—

19 "(1) IN GENERAL.—Each clearing agency that
20 clears security-based swaps shall designate an indi-
21 vidual to serve as a compliance officer.

22 "(2) DUTIES.—The compliance officer shall—

23 "(A) report directly to the board or to the
24 senior officer of the clearing agency;

1 "(B) in consultation with the board of the
2 clearing agency, a body performing a function
3 similar to that of a board, or the senior officer
4 of the clearing agency, resolve any conflicts of
5 interest that may arise;
6 "(C) be responsible for administering the
7 policies and procedures required to be estab-
8 lished pursuant to this section;
9 "(D) ensure compliance with securities
10 laws and the rules and regulations issued there-
11 under, including rules prescribed by the Com-
12 mission pursuant to this section; and
13 "(E) establish procedures for remediation
14 of non-compliance issues found during compli-
15 ance office reviews, lookbacks, internal or exter-
16 nal audit findings, self-reported errors, or
17 through validated complaints. Procedures will
18 establish the handling, management response,
19 remediation, re-testing, and closing of non-com-
20 pliant issues.
21 "(3) ANNUAL REPORTS REQUIRED.—The com-
22 pliance officer shall annually prepare and sign a re-
23 port on the compliance of the clearing agency with
24 the securities laws and its policies and procedures,
25 including its code of ethics and conflict of interest

1 policies, in accordance with rules prescribed by the
2 Commission. Such compliance report shall accom-
3 pany the financial reports of the clearing agency
4 that are required to be furnished to the Commission
5 pursuant to this section and shall include a certifi-
6 cation that, under penalty of law, the report is accu-
7 rate and complete.

8 "(l) STANDARDS FOR CLEARING AGENCIES CLEAR-
9 ING SWAP TRANSACTIONS.—To be registered and to main-
10 tain registration as a clearing agency that clears swap
11 transactions, a clearing agency shall comply with such
12 standards as the Commission may establish by rule. In
13 establishing any such standards, and in the exercise of its
14 oversight of such a clearing agency pursuant to this title,
15 the Commission may conform such standards or oversight
16 to reflect evolving United States and international stand-
17 ards. Except where the Commission determines otherwise
18 by rule or regulation, a clearing agency shall have reason-
19 able discretion in establishing the manner in which it com-
20 plies with any such standards.

21 "(m) RULES.—Not later than 1 year after the date
22 of the enactment of the Derivative Markets Transparency
23 and Accountability Act of 2009, the Commission shall
24 adopt rules governing persons that are registered as clear-
25 ing agencies for security-based swaps under this Act.

1 "(n) EXEMPTIONS.—

2 "(1) IN GENERAL.—The Commission may ex-
3 empt, conditionally or unconditionally, a clearing
4 agency from registration under this section for the
5 clearing of security-based swaps if the Commission
6 finds that such clearing agency is subject to com-
7 parable, comprehensive supervision and regulation
8 on a consolidated basis by the Commodity Futures
9 Trading Commission, a Prudential Regulator, or the
10 appropriate governmental authorities in the organi-
11 zation's home country or if necessary or appropriate
12 in the public interest and consistent with the pur-
13 pose of this Act.

14 "(2) A person that is required to be registered
15 as clearing agency under this section, whose prin-
16 cipal business is clearing commodity futures and op-
17 tions on commodity futures transactions and which
18 is a derivatives clearing organization registered with
19 the Commodity Futures Trading Commission under
20 the Commodity Exchange Act (7 U.S.C. 1, et seq.),
21 shall be unconditionally exempt from registration
22 under this section solely for the purpose of clearing
23 security-based swaps, unless the Commission finds
24 that such derivatives clearing organization is not
25 subject to comparable, comprehensive supervision

1 and regulation by the Commodity Futures Trading
2 Commission.".
3 (c) EXECUTION OF SECURITY-BASED SWAPS.—The
4 Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.)
5 is amended by inserting after section 5 the following:
6 **"SEC. 5A. EXECUTION OF SECURITY-BASED SWAPS.**
7 "(a) EXECUTION TRANSPARENCY.—
8 "(1) REQUIREMENT.—A security-based swap
9 that is subject to the clearing requirement of section
10 3B shall not be traded except on or through a na-
11 tional securities exchange or on or through an swap
12 execution facility registered under section 5h, that
13 makes the security-based swap available for trading.
14 "(2) EXCEPTIONS.—The requirement of para-
15 graph (1) shall not apply to a security-based swap
16 if no national securities exchange or swap execution
17 facility makes the security-based swap available for
18 trading.
19 "(3) REQUIRED REPORTING.—If the exception
20 of paragraph (2) applies and there is no national se-
21 curities exchange or swap execution facility that
22 makes the security-based swap available to trade,
23 the counterparties shall comply with any record-
24 keeping and transaction reporting requirements as
25 may be prescribed by the Commission with respect

1 to security-based swaps subject to the requirements
2 of paragraph (1).
3 "(b) EXCHANGE TRADING.—In adopting rules and
4 regulations, the Commission shall endeavor to eliminate
5 unnecessary impediments to the trading on national secu-
6 rities exchanges of contracts, agreements, or transactions
7 that would be swaps but for the trading of such contracts,
8 agreements or transactions on such a national securities
9 exchange.".
10 (d) SWAP EXECUTION FACILITIES.—The Securities
11 Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended
12 by adding after section 3B (as added by subsection (a))
13 the following:
14 **"SEC. 3C. SWAP EXECUTION FACILITIES.**
15 "(a) REGISTRATION.—No person may operate a facil-
16 ity for the trading of security-based swaps unless the facil-
17 ity is registered as a swap execution facility under this
18 section.
19 "(b) REQUIREMENTS FOR TRADING.—
20 "(1) IN GENERAL.—A swap execution facility
21 that is registered under subsection (a) may list for
22 trading any security-based swap.
23 "(2) RULES FOR TRADING THROUGH THE FA-
24 CILITY.—Not later than 1 year after the date of the
25 enactment of the Derivative Markets Transparency

1 and Accountability Act of 2009, the Commission
2 shall adopt rules to allow a security-based swap to
3 be traded through the facilities of an exchange or a
4 swap execution facility. Such rules shall permit an
5 intermediary, acting as principal or agent, to enter
6 into or execute a security-based swap, notwith-
7 standing section 3B(b), if the security-based swap is
8 reported, recorded, or confirmed in accordance with
9 the rules of the exchange or swap execution facility.
10 "(c) TRADING BY EXCHANGES.—An exchange shall,
11 to the extent that the exchange also operates a swap exe-
12 cution facility and uses the same electronic trade execution
13 system for trading on the exchange and the swap execu-
14 tion facility, identify whether the electronic trading is tak-
15 ing place on the exchange or the swap execution facility.
16 "(d) CORE PRINCIPLES FOR SWAP EXECUTION FA-
17 CILITIES.—
18 "(1) IN GENERAL.—To be registered as, and to
19 maintain its registration as, a swap execution facil-
20 ity, the facility shall comply with the core principles
21 specified in this subsection and any requirement that
22 the Commission may impose by rule or regulation
23 pursuant to section 8a(5). Except where the Com-
24 mission determines otherwise by rule or regulation,
25 the facility shall have reasonable discretion in estab-

1 lishing the manner in which it complies with these
2 core principles.
3 "(2) COMPLIANCE WITH RULES.—The swap
4 execution facility shall—
5 "(A) monitor and enforce compliance with
6 any of the rules of the facility, including the
7 terms and conditions of the swaps traded on or
8 through the facility and any limitations on ac-
9 cess to the facility; and
10 "(B) establish and enforce trading and
11 participation rules that will deter abuses and
12 have the capacity to detect, investigate, and en-
13 force those rules, including means to—
14 "(i) provide market participants with
15 impartial access to the market; and
16 "(ii) capture information that may be
17 used in establishing whether rule violations
18 have occurred.
19 "(3) SECURITY-BASED SWAPS NOT READILY
20 SUSCEPTIBLE TO MANIPULATION.—The swap execu-
21 tion facility shall permit trading only in security-
22 based swaps that are not readily susceptible to ma-
23 nipulation.
24 "(4) MONITORING OF TRADING.—The swap
25 execution facility shall—

1 "(A) establish and enforce rules or terms
2 and conditions defining, or specifications detail-
3 ing, trading procedures to be used in entering
4 and executing orders traded on or through its
5 facilities; and
6 "(B) monitor trading in swaps to prevent
7 manipulation, price distortion, and disruptions
8 of the delivery or cash settlement process
9 through surveillance, compliance, and discipli-
10 nary practices and procedures, including meth-
11 ods for conducting real-time monitoring of trad-
12 ing and comprehensive and accurate trade re-
13 constructions.
14 "(5) ABILITY TO OBTAIN INFORMATION.—The
15 swap execution facility shall—
16 "(A) establish and enforce rules that will
17 allow the facility to obtain any necessary infor-
18 mation to perform any of the functions de-
19 scribed in this section;
20 "(B) provide the information to the Com-
21 mission upon request; and
22 "(C) have the capacity to carry out such
23 international information-sharing agreements as
24 the Commission may require.

1 "(6) FINANCIAL INTEGRITY OF TRANS-
2 ACTIONS.—The swap execution facility shall estab-
3 lish and enforce rules and procedures for ensuring
4 the financial integrity of security-based swaps en-
5 tered on or through its facilities, including the clear-
6 ance and settlement of the security-based swaps pur-
7 suant to section 3B.

8 "(7) EMERGENCY AUTHORITY.—The swap exe-
9 cution facility shall adopt rules to provide for the ex-
10 ercise of emergency authority, in consultation or co-
11 operation with the Commission, where necessary and
12 appropriate, including the authority to suspend or
13 curtail trading in a security-based swap.

14 "(8) TIMELY PUBLICATION OF TRADING INFOR-
15 MATION.—The swap execution facility shall make
16 public timely information on price, trading volume,
17 and other trading data to the extent prescribed by
18 the Commission. The Commission shall evaluate the
19 impact of public disclosure on market liquidity in the
20 relevant market, and shall seek to avoid public dis-
21 closure of information in a manner that would sig-
22 nificantly reduce market liquidity. The Commission
23 shall not disclose information related to the internal
24 business decisions of particular market participants.

1 "(9) RECORDKEEPING AND REPORTING.—The
2 swap execution facility shall maintain records of all
3 activities related to the business of the facility, in-
4 cluding a complete audit trail, in a form and manner
5 acceptable to the Commission for a period of 5
6 years, and report to the Commission all information
7 determined by the Commission to be necessary or
8 appropriate for the Commission to perform its re-
9 sponsibilities under this Act in a form and manner
10 acceptable to the Commission. The Commission shall
11 adopt data collection and reporting requirements for
12 swap execution facilities that are comparable to cor-
13 responding requirements for clearing agencies and
14 security-based swap repositories.
15 "(10) CONFLICTS OF INTEREST.—The swap
16 execution facility shall—
17 "(A) establish and enforce rules to mini-
18 mize conflicts of interest in its decision-making
19 process; and
20 "(B) establish a process for resolving the
21 conflicts of interest.
22 "(11) FINANCIAL RESOURCES.—The swap exe-
23 cution facility shall have adequate financial, oper-
24 ational, and managerial resources to discharge its
25 responsibilities. Such financial resources shall be

1 considered adequate if their value exceeds the total
2 amount that would enable the facility to cover its op-
3 erating costs for a period of one year, calculated on
4 a rolling basis.
5 "(12) SYSTEM SAFEGUARDS.—The swap execu-
6 tion facility shall—
7 "(A) establish and maintain a program of
8 risk analysis and oversight to identify and mini-
9 mize sources of operational risk, through the
10 development of appropriate controls and proce-
11 dures, and the development of automated sys-
12 tems, that are reliable, secure, and have ade-
13 quate scalable capacity;
14 "(B) establish and maintain emergency
15 procedures, backup facilities, and a plan for dis-
16 aster recovery that allow for the timely recovery
17 and resumption of operations and the fulfill-
18 ment of the swap execution facility's respon-
19 sibilities and obligation; and
20 "(C) periodically conduct tests to verify
21 that backup resources are sufficient to ensure
22 continued order processing and trade matching,
23 price reporting, market surveillance, and main-
24 tenance of a comprehensive and accurate audit
25 trail.

1 "(13) DESIGNATION OF COMPLIANCE OFFI-
2 CER.—
3 "(A) IN GENERAL.—Each swap execution
4 facility shall designate an individual to serve as
5 a compliance officer.
6 "(B) DUTIES.—The compliance officer—
7 "(i) shall report directly to the board
8 or to the senior officer of the facility; and
9 "(ii) shall—
10 "(I) review compliance with the
11 core principles in section 3B(e).
12 "(II) in consultation with the
13 board of the facility, a body per-
14 forming a function similar to that of
15 a board, or the senior officer of the
16 facility, resolve any conflicts of inter-
17 est that may arise;
18 "(III) be responsible for admin-
19 istering the policies and procedures
20 required to be established pursuant to
21 this section; and
22 "(IV) ensure compliance with se-
23 curities laws and the rules and regula-
24 tions issued thereunder, including

1 rules prescribed by the Commission
2 pursuant to this section; and
3 "(iii) shall establish procedures for re-
4 mediation of non-compliance issues found
5 during compliance office reviews,
6 lookbacks, internal or external audit find-
7 ings, self-reported errors, or through vali-
8 dated complaints and to establish the han-
9 dling, management response, remediation,
10 re-testing, and closing of non-compliant
11 issues.
12 "(C) ANNUAL REPORTS REQUIRED.—The
13 compliance officer shall annually prepare and
14 sign a report on the compliance of the facility
15 with the securities laws and its policies and pro-
16 cedures, including its code of ethics and conflict
17 of interest policies, in accordance with rules
18 prescribed by the Commission. Such compliance
19 report shall accompany the financial reports of
20 the facility that are required to be furnished to
21 the Commission pursuant to this section and
22 shall include a certification that, under penalty
23 of law, the report is accurate and complete.
24 "(e) EXEMPTIONS.—The Commission may exempt,
25 conditionally or unconditionally, a swap execution facility

1 from registration under this section if the Commission
2 finds that such organization is subject to comparable,
3 comprehensive supervision and regulation on a consoli-
4 dated basis by the Commodity Futures Trading Commis-
5 sion, a Prudential Regulator or the appropriate govern-
6 mental authorities in the organization's home country or
7 if necessary or appropriate in the public interest and con-
8 sistent with the purpose of this Act.

9 "(f) RULES.—Not later than 1 year after the date
10 of the enactment of the Derivative Markets Transparency
11 and Accountability Act of 2009, the Commission shall pre-
12 scribe rules governing the regulation of swap execution fa-
13 cilities under this section.".

14 (e) SEGREGATION OF ASSETS HELD AS COLLATERAL
15 IN SWAP TRANSACTIONS.—The Securities Exchange Act
16 of 1934 (15 U.S.C. 78a, et seq.) is further amended by
17 adding after section 3C (as added by subsection (b) the
18 following:

19 **"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
20 **IN SECURITY-BASED SWAP TRANSACTIONS.**

21 "(a) OVER-THE-COUNTER SWAPS.—At the request of
22 a counterparty to a security-based swap who provides
23 funds or other property to a security-based swap dealer
24 as initial margin or collateral to secure the obligations of
25 the counterparty under a security-based swap between the

1 counterparty and the security-based swap dealer that is
2 not submitted for clearing to a derivatives clearing agency,
3 the security-based swap dealer shall segregate the funds
4 or other property for the benefit of the counterparty, and
5 maintain the funds or other property in an account which
6 is carried by a third-party custodian and designated as
7 a segregated account for the counterparty, in accordance
8 with such rules and regulations as the Commission or Pru-
9 dential Regulator may prescribe. If a security-based swap
10 counterparty is a security-based swap dealer or major se-
11 curity-based swap participant who owns more than 20 per-
12 cent of, or has more than 50 percent representation on
13 the board of directors of a custodian, the custodian shall
14 not be considered independent from the security-based
15 swap counterparties for purposes of the preceding sen-
16 tence. This subsection shall not be interpreted to preclude
17 commercial arrangements regarding the investment of the
18 segregated funds or other property and the related alloca-
19 tion of gains and losses resulting from any such invest-
20 ment.

21 "(b) FURTHER AUDIT REPORTING.—If a security-
22 based swap dealer does not segregate funds pursuant to
23 the request of a security-based swap counterparty in ac-
24 cordance with subsection (a), the security-based swap
25 dealer shall report to its counterparty on a quarterly basis

1 that its procedures relating to margin and collateral re-
2 quirements are in compliance with the agreement of the
3 counterparties.".

4 (f) TRADING IN SECURITY-BASED SWAPS.—Section 6
5 of the Securities Exchange Act of 1934 (15 U.S.C. 78f)
6 is amended by adding at the end the following:

7 "(l) It shall be unlawful for any person to effect a
8 transaction in a security-based swap with or for a person
9 that is not an eligible contract participant unless such
10 transaction is effected on a national securities exchange
11 registered pursuant to subsection (b).".

12 (g) ADDITIONS OF SECURITY-BASED SWAPS TO CER-
13 TAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)
14 through (3) of section 9(b) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read
16 as follows:

17 "(1) any transaction in connection with any se-
18 curity whereby any party to such transaction ac-
19 quires (A) any put, call, straddle, or other option or
20 privilege of buying the security from or selling the
21 security to another without being bound to do so;
22 (B) any security futures product on the security; or
23 (C) any security-based swap involving the security or
24 the issuer of the security; or

1 "(2) any transaction in connection with any se-
2 curity with relation to which he has, directly or indi-
3 rectly, any interest in any (A) such put, call, strad-
4 dle, option, or privilege; (B) such security futures
5 product; or (C) such security-based swap; or
6 "(3) any transaction in any security for the ac-
7 count of any person who he has reason to believe
8 has, and who actually has, directly or indirectly, any
9 interest in any (A) such put, call, straddle, option,
10 or privilege; (B) such security futures product with
11 relation to such security; or (C) any security-based
12 swap involving such security or the issuer of such se-
13 curity.".
14 (h) RULEMAKING AUTHORITY TO PREVENT FRAUD,
15 MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-
16 BASED SWAPS.—Section 9 of the Securities Exchange Act
17 of 1934 (15 U.S.C. 78i) is amended by adding at the end
18 the following:
19 "(i) It shall be unlawful for any person, directly or
20 indirectly, by the use of any means or instrumentality of
21 interstate commerce or of the mails, or of any facility of
22 any national securities exchange, to effect any transaction
23 in, or to induce or attempt to induce the purchase or sale
24 of, any security-based swap, in connection with which such
25 person engages in any fraudulent, deceptive, or manipula-

1 tive act or practice, makes any fictitious quotation, or en-
2 gages in any transaction, practice, or course of business
3 which operates as a fraud or deceit upon any person. The
4 Commission shall, for the purposes of this paragraph, by
5 rules and regulations define, and prescribe means reason-
6 ably designed to prevent, such transactions, acts, prac-
7 tices, and courses of business as are fraudulent, deceptive,
8 or manipulative, and such quotations as are fictitious.".
9 (i) POSITION LIMITS AND POSITION ACCOUNT-
10 ABILITY FOR SECURITY-BASED SWAPS.—The Securities
11 Exchange Act of 1934 is amended by inserting after sec-
12 tion 10A (15 U.S.C. 78j–1) the following new section:
13 **"SEC. 10B. POSITION LIMITS AND POSITION ACCOUNT-**
14 **ABILITY FOR SECURITY-BASED SWAPS AND**
15 **LARGE TRADER REPORTING.**
16 "(a) POSITION LIMITS.—As a means reasonably de-
17 signed to prevent fraud and manipulation, the Commission
18 may, by rule or regulation, as necessary or appropriate
19 in the public interest or for the protection of investors,
20 establish limits (including related hedge exemption provi-
21 sions) on the size of positions in any security-based swap
22 that may be held by any person. In establishing such lim-
23 its, the Commission may require any person to aggregate
24 positions in—

1 "(1) any security-based swap and any security
2 or loan or group or index of securities or loans on
3 which such security-based swap is based, which such
4 security-based swap references, or to which such se-
5 curity-based swap is related as described in section
6 3(a)(68), and any other instrument relating to such
7 security or loan or group or index of securities or
8 loans; or
9 "(2) any security-based swap and (A) any secu-
10 rity or group or index of securities, the price, yield,
11 value, or volatility of which, or of which any interest
12 therein, is the basis for a material term of such se-
13 curity-based swap as described in section 3(a)(76)
14 and (B) any security-based swap and any other in-
15 strument relating to the same security or group or
16 index of securities.
17 "(b) EXEMPTIONS.—The Commission, by rule, regu-
18 lation, or order, may conditionally or unconditionally ex-
19 empt any person or class of persons, any security-based
20 swap or class of security-based swaps, or any transaction
21 or class of transactions from any requirement it may es-
22 tablish under this section with respect to position limits.
23 "(c) SRO RULES.—
24 "(1) IN GENERAL.—As a means reasonably de-
25 signed to prevent fraud or manipulation, the Com-

1 mission, by rule, regulation, or order, as necessary
2 or appropriate in the public interest, for the protec-
3 tion of investors, or otherwise in furtherance of the
4 purposes of this title, may direct a self-regulatory
5 organization—
6 "(A) to adopt rules regarding the size of
7 positions in any security-based swap that may
8 be held by—
9 "(i) any member of such self-regu-
10 latory organization; or
11 "(ii) any person for whom a member
12 of such self-regulatory organization effects
13 transactions in such security-based swap;
14 and
15 "(B) to adopt rules reasonably designed to
16 ensure compliance with requirements prescribed
17 by the Commission under subsection (c)(1)(A).
18 "(2) REQUIREMENT TO AGGREGATE POSI-
19 TIONS.—In establishing such limits, the self-regu-
20 latory organization may require such member or per-
21 son to aggregate positions in—
22 "(A) any security-based swap and any se-
23 curity or loan or group or index of securities or
24 loans on which such security-based swap is
25 based, which such security-based swap ref-

1 erences, or to which such security-based swap is
2 related as described in section 3(a)(68), and
3 any other instrument relating to such security
4 or loan or group or index of securities or loans;
5 or
6 "(B)(i) any security-based swap; and
7 "(ii) any security-based swap and any
8 other instrument relating to the same security
9 or group or index of securities.
10 "(d) LARGE TRADER REPORTING.—The Commis-
11 sion, by rule or regulation, may require any person that
12 effects transactions for such person's own account or the
13 account of others in any securities-based swap or
14 uncleared security-based swap agreement and any security
15 or loan or group or index of securities or loans as set forth
16 in paragraphs (1) and (2) of subsection (a) under this sec-
17 tion to report such information as the Commission may
18 prescribe regarding any position or positions in any secu-
19 rity-based swap or uncleared security-based swap agree-
20 ment and any security or loan or group or index of securi-
21 ties or loans and any other instrument relating to such
22 security or loan or group or index of securities or loans
23 as set forth in paragraphs (1) and (2) of subsection (a)
24 under this section.".

1 (j) PUBLIC REPORTING AND REPOSITORIES FOR SE-
2 CURITY-BASED SWAPS.—Section 13 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78m) is amended by add-
4 ing at the end the following:
5 "(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
6 BASED SWAP DATA.—
7 "(1) IN GENERAL.—The Commission, or a per-
8 son designated by the Commission pursuant to para-
9 graph (2), shall make available to the public, in a
10 manner that does not disclose the business trans-
11 actions and market positions of any person, aggre-
12 gate data on security-based swap trading volumes
13 and positions from the sources set forth in para-
14 graph (3).
15 "(2) DESIGNEE OF THE COMMISSION.—The
16 Commission may designate a clearing agency or a
17 security-based swap repository to carry out the pub-
18 lic reporting described in paragraph (1).
19 "(3) SOURCES OF INFORMATION.—The sources
20 of the information to be publicly reported as de-
21 scribed in paragraph (1) are—
22 "(A) clearing agencies pursuant to section
23 3A;
24 "(B) security-based swap repositories pur-
25 suant to subsection (n); and

1 "(C) reports received by the Commission
2 pursuant to section 13A.
3 "(n) SECURITY-BASED SWAP REPOSITORIES.—
4 "(1) REGISTRATION REQUIREMENT.—
5 "(A) IN GENERAL.—It shall be unlawful
6 for a security-based swap repository, unless reg-
7 istered with the Commission, directly or indi-
8 rectly to make use of the mails or any means
9 or instrumentality of interstate commerce to
10 perform the functions of a security-based swap
11 repository.
12 "(B) INSPECTION AND EXAMINATION.—
13 Registered security-based swap repositories
14 shall be subject to inspection and examination
15 by any representatives of the Commission.
16 "(2) STANDARD SETTING.—
17 "(A) DATA IDENTIFICATION.—The Com-
18 mission shall prescribe standards that specify
19 the data elements for each security-based swap
20 that shall be collected and maintained by each
21 security-based swap repository.
22 "(B) DATA COLLECTION AND MAINTE-
23 NANCE.—The Commission shall prescribe data
24 collection and data maintenance standards for
25 security-based swap repositories.

1 "(C) COMPARABILITY.—The standards
2 prescribed by the Commission under this sub-
3 section shall be comparable to the data stand-
4 ards imposed by the Commission on clearing
5 agencies that clear security-based swaps.
6 "(3) DUTIES.—A security-based swap reposi-
7 tory shall—
8 "(A) accept data prescribed by the Com-
9 mission for each security-based swap under this
10 paragraph (2);
11 "(B) maintain such data in such form and
12 manner and for such period as may be required
13 by the Commission;
14 "(C) provide to the Commission, or its des-
15 ignee, such information as is required by, and
16 in a form and at a frequency to be determined
17 by, the Commission, in order to comply with the
18 public reporting requirements contained in sub-
19 section (m); and
20 "(D) make available, on a confidential
21 basis, all data obtained by the security-based
22 swap repository, including individual
23 counterparty trade and position data, to the
24 Commission, the appropriate Federal banking
25 agencies, the Commodity Futures Trading

1 Commission, the Financial Services Oversight
2 Council, and the Department of Justice or to
3 other persons the Commission deems appro-
4 priate, including foreign financial supervisors
5 (including foreign futures authorities), foreign
6 central banks, and foreign ministries.

7 "(4) RULES.—Not later than 1 year after the
8 date of the enactment of the Derivative Markets
9 Transparency and Accountability Act of 2009, the
10 Commission shall adopt rules governing persons that
11 are registered under this section, including rules
12 that specify the data elements that shall be collected
13 and maintained.

14 "(5) EXEMPTIONS.—The Commission may ex-
15 empt, conditionally or unconditionally, a security-
16 based swap repository from the requirements of this
17 section if the Commission finds that such security-
18 based swap repository is subject to comparable, com-
19 prehensive supervision or regulation on a consoli-
20 dated basis by the Commodity Futures Trading
21 Commission, a Prudential Regulator or the appro-
22 priate governmental authorities in the organization's
23 home country or if necessary or appropriate in the
24 public interest and consistent with the purpose of
25 this Act.".

1 **SEC. 3204. REGISTRATION AND REGULATION OF SWAP**
2 **DEALERS AND MAJOR SWAP PARTICIPANTS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
4 et seq.) is amended by inserting after section 15E (15
5 U.S.C. 78o–7) the following:

6 **"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-**
7 **BASED SWAP DEALERS AND MAJOR SECU-**
8 **RITY-BASED SWAP PARTICIPANTS.**

9 "(a) REGISTRATION.—

10 "(1) It shall be unlawful for any person to act
11 as a security-based swap dealer unless such person
12 is registered as a security-based swap dealer with
13 the Commission.

14 "(2) It shall be unlawful for any person to act
15 as a major security-based swap participant unless
16 such person is registered as a major security-based
17 swap participant with the Commission.

18 "(b) REQUIREMENTS.—

19 "(1) IN GENERAL.—A person shall register as
20 a security-based swap dealer or major security-based
21 swap participant by filing a registration application
22 with the Commission.

23 "(2) CONTENTS.—The application shall be
24 made in such form and manner as prescribed by the
25 Commission, giving any information and facts as the
26 Commission may deem necessary concerning the

1 business in which the applicant is or will be engaged.
2 Such person, when registered as a security-based
3 swap dealer or major security-based swap partici-
4 pant, shall continue to report and furnish to the
5 Commission such information pertaining to such
6 person's business as the Commission may require.
7 "(3) EXPIRATION.—Each registration shall ex-
8 pire at such time as the Commission may by rule or
9 regulation prescribe.
10 "(4) RULES.—Except as provided in sub-
11 sections (c) and (d), the Commission may prescribe
12 rules applicable to security-based swap dealers and
13 major security-based swap participants, including
14 rules that limit the activities of security-based swap
15 dealers and major security-based swap participants.
16 Except as provided in subsection (d)(1)(A), the
17 Commission may provide conditional or uncondi-
18 tional exemptions from some or all of the rules or
19 requirements prescribed under this section for secu-
20 rity-based swap dealers and major security-based
21 swap participants.
22 "(5) TRANSITION.—Rules adopted under this
23 section shall provide for the registration of security-
24 based swap dealers and major security-based swap
25 participants no later than 1 year after the effective

1 date of the Derivative Markets Transparency and
2 Accountability Act of 2009.
3 "(c) RULES.—
4 "(1) IN GENERAL.—Not later than 1 year after
5 the date of the enactment of the Derivative Markets
6 Transparency and Accountability Act of 2009, the
7 Commission shall adopt rules for persons that are
8 registered as security-based swap dealers or major
9 security-based swap participants under this Act.
10 "(2) EXCEPTION FOR PRUDENTIAL REQUIRE-
11 MENTS.—The Commission shall not prescribe rules
12 imposing prudential requirements on security-based
13 swap dealers or major security-based swap partici-
14 pants for which there is a Prudential Regulator.
15 This provision shall not be construed as limiting the
16 authority of the Commission to prescribe appropriate
17 business conduct, reporting, and recordkeeping re-
18 quirements to protect investors.
19 "(d) CAPITAL AND MARGIN REQUIREMENTS.—
20 "(1) IN GENERAL.—
21 "(A) BANK SECURITY-BASED SWAP DEAL-
22 ERS AND MAJOR SECURITY-BASED SWAP PAR-
23 TICIPANTS.—Each registered security-based
24 swap dealer and major security-based swap par-
25 ticipant for which there is a Prudential Regu-

1 lator shall meet such minimum capital require-
2 ments and minimum initial and variation mar-
3 gin requirements as the Prudential Regulators
4 shall by rule or regulation jointly prescribe
5 that—
6 "(i) help ensure the safety and sound-
7 ness of the security-based swap dealer or
8 major security-based swap participant; and
9 "(ii) are appropriate for the risk asso-
10 ciated with the non-cleared swaps held as
11 a swap dealer or major swap participant.
12 "(B) NON-BANK SECURITY-BASED SWAP
13 DEALERS AND MAJOR SECURITY-BASED SWAP
14 PARTICIPANTS.—Each registered security-based
15 swap dealer and major security-based swap par-
16 ticipant for which there is not a Prudential
17 Regulator shall meet such minimum capital re-
18 quirements and minimum initial and variation
19 margin requirements as the Commission shall
20 by rule or regulation prescribe that—
21 "(i) help ensure the safety and sound-
22 ness of the security-based swap dealer or
23 major security-based swap participant; and

1 "(ii) are appropriate for the risk asso-
2 ciated with the non-cleared swaps held as
3 the swap dealer or major swap participant.
4 "(2) RULES.—
5 "(A) BANK SECURITY-BASED SWAP DEAL-
6 ERS AND MAJOR SECURITY-BASED SWAP PAR-
7 TICIPANTS.—Not later than 1 year after the
8 date of the enactment of the Derivative Markets
9 Transparency and Accountability Act of 2009,
10 the Prudential Regulators, in consultation with
11 the Commission, shall jointly adopt rules impos-
12 ing capital and margin requirements under this
13 subsection for security-based swap dealers and
14 major security-based swap participants, with re-
15 spect to their activities as a security-based swap
16 dealer or major security-based swap participant
17 for which there is a Prudential Regulator.
18 "(B) NON-BANK SECURITY-BASED SWAP
19 DEALERS AND MAJOR SECURITY-BASED SWAP
20 PARTICIPANTS.—Not later than 1 year after the
21 date of the enactment of the Derivative Markets
22 Transparency and Accountability Act of 2009,
23 the Commission shall adopt rules imposing cap-
24 ital and margin requirements under this sub-
25 section for security-based swap dealers and

1 major security-based swap participants for
2 which there is no Prudential Regulator.
3 "(3) AUTHORITY.—Nothing in this section shall
4 limit the authority of the Commission to set capital
5 requirements for a broker or dealer registered in ac-
6 cordance with section 15 of this Act.
7 "(e) REPORTING AND RECORDKEEPING.—
8 "(1) IN GENERAL.—Each registered security-
9 based swap dealer and major security-based swap
10 participant—
11 "(A) shall make such reports as are pre-
12 scribed by the Commission by rule or regulation
13 regarding the transactions and positions and fi-
14 nancial condition of such person;
15 "(B) for which—
16 "(i) there is a Prudential Regulator
17 shall keep books and records of all activi-
18 ties related to its business as a security-
19 based swap dealer or major security-based
20 swap participant in such form and manner
21 and for such period as may be prescribed
22 by the Commission by rule or regulation;
23 "(ii) there is no Prudential Regulator
24 shall keep books and records in such form
25 and manner and for such period as may be

1 prescribed by the Commission by rule or
2 regulation; and
3 "(C) shall keep such books and records
4 open to inspection and examination by any rep-
5 resentative of the Commission.
6 "(2) RULES.—Not later than 1 year after the
7 date of enactment of the Derivative Markets Trans-
8 parency and Accountability Act of 2009, the Com-
9 mission shall adopt rules governing reporting and
10 recordkeeping for security-based swap dealers and
11 major security-based swap participants.
12 "(f) DAILY TRADING RECORDS.—
13 "(1) IN GENERAL.—Each registered security-
14 based swap dealer and major security-based swap
15 participant shall maintain daily trading records of
16 its security-based swaps and all related records (in-
17 cluding related transactions) and recorded commu-
18 nications including but not limited to electronic mail,
19 instant messages, and recordings of telephone calls,
20 for such period as may be prescribed by the Com-
21 mission by rule or regulation.
22 "(2) INFORMATION REQUIREMENTS.—The daily
23 trading records shall include such information as the
24 Commission shall prescribe by rule or regulation.

1 "(3) CUSTOMER RECORDS.—Each registered se-
2 curity-based swap dealer or major security-based
3 swap participant shall maintain daily trading records
4 for each customer or counterparty in such manner
5 and form as to be identifiable with each security-
6 based swap transaction.
7 "(4) AUDIT TRAIL.—Each registered security-
8 based swap dealer or major security-based swap par-
9 ticipant shall maintain a complete audit trail for
10 conducting comprehensive and accurate trade recon-
11 structions.
12 "(5) RULES.—Not later than 1 year after the
13 date of the enactment of the Derivative Markets
14 Transparency and Accountability Act of 2009, the
15 Commission shall adopt rules governing daily trad-
16 ing records for security-based swap dealers and
17 major security-based swap participants.
18 "(g) BUSINESS CONDUCT STANDARDS.—
19 "(1) IN GENERAL.—Each registered security-
20 based swap dealer and major security-based swap
21 participant shall conform with business conduct
22 standards as may be prescribed by the Commission
23 by rule or regulation addressing—
24 "(A) fraud, manipulation, and other abu-
25 sive practices involving security-based swaps

1 (including security-based swaps that are offered
2 but not entered into);
3 "(B) diligent supervision of its business as
4 a security-based swap dealer;
5 "(C) adherence to all applicable position
6 limits; and
7 "(D) such other matters as the Commis-
8 sion shall determine to be necessary or appro-
9 priate.
10 "(2) BUSINESS CONDUCT REQUIREMENTS.—
11 Business conduct requirements adopted by the Com-
12 mission shall—
13 "(A) establish the standard of care for a
14 security-based swap dealer or major security-
15 based swap participant to verify that any secu-
16 rity-based swap counterparty meets the eligi-
17 bility standards for an eligible contract partici-
18 pant;
19 "(B) require disclosure by the security-
20 based swap dealer or major security-based swap
21 participant to any counterparty to the security-
22 based swap (other than a security-based swap
23 dealer or major security-based swap partici-
24 pant) of:

1 "(i) information about the material
2 risks and characteristics of the security-
3 based swap;
4 "(ii) for cleared security-based swaps,
5 upon the request of the counterparty, the
6 daily mark from the appropriate clearing
7 agency, and for non-cleared security-based
8 swaps, upon request of the counterparty,
9 the daily mark of the security-based swap
10 dealer or major security-based swap partic-
11 ipant; and
12 "(iii) any other material incentives or
13 conflicts of interest that the security-based
14 swap dealer or major security-based swap
15 participant may have in connection with
16 the security-based swap; and
17 "(C) establish such other standards and
18 requirements as the Commission may determine
19 are necessary or appropriate in the public inter-
20 est, for the protection of investors, or otherwise
21 in furtherance of the purposes of this title.
22 "(3) RULES.—The Commission shall prescribe
23 rules under this subsection governing business con-
24 duct standards for security-based swap dealers and
25 major security-based swap participants not later

1 than 1 year after the date of enactment of the De-
2 rivative Markets Transparency and Accountability
3 Act of 2009.
4 "(h) DOCUMENTATION STANDARDS.—
5 "(1) IN GENERAL.—Each registered security-
6 based swap dealer and major security-based swap
7 participant shall conform with standards, as may be
8 prescribed by the Commission by rule or regulation,
9 addressing timely and accurate confirmation, proc-
10 essing, netting, documentation, and valuation of all
11 security-based swaps.
12 "(2) RULES.—Not later than 1 year after the
13 date of enactment of the Derivative Markets Trans-
14 parency and Accountability Act of 2009, the Com-
15 mission and the appropriate Federal banking agen-
16 cies, shall adopt rules governing the standards de-
17 scribed in paragraph (1) for security-based swap
18 dealers and major security-based swap participants.
19 "(i) DEALER RESPONSIBILITIES.—Each registered
20 security-based swap dealer and major security-based swap
21 participant at all times shall comply with the following re-
22 quirements:
23 "(1) MONITORING OF TRADING.—The security-
24 based swap dealer or major security-based swap par-
25 ticipant shall monitor its trading in security-based

1 swaps to prevent violations of applicable position
2 limits.
3 "(2) DISCLOSURE OF GENERAL INFORMA-
4 TION.—The security-based swap dealer or major se-
5 curity-based swap participant shall disclose to the
6 Commission or to the Prudential Regulator for such
7 security-based swap dealer or major security-based
8 swap participant, as applicable, information con-
9 cerning—
10 "(A) terms and conditions of its security-
11 based swaps;
12 "(B) security-based swap trading oper-
13 ations, mechanisms, and practices;
14 "(C) financial integrity protections relating
15 to security-based swaps; and
16 "(D) other information relevant to its trad-
17 ing in security-based swaps.
18 "(3) ABILITY TO OBTAIN INFORMATION.—The
19 security-based swap dealer or major swap security-
20 based participant shall—
21 "(A) establish and enforce internal systems
22 and procedures to obtain any necessary infor-
23 mation to perform any of the functions de-
24 scribed in this section; and

1 "(B) provide the information to the Com-
2 mission or to the Prudential Regulator for such
3 security-based swap dealer or major security-
4 based swap participant, as applicable, upon re-
5 quest.
6 "(4) CONFLICTS OF INTEREST.—The security-
7 based swap dealer and major security-based swap
8 participant shall implement conflict-of-interest sys-
9 tems and procedures that—
10 "(A) establish structural and institutional
11 safeguards to assure that the activities of any
12 person within the firm relating to research or
13 analysis of the price or market for any security
14 are separated by appropriate informational par-
15 titions within the firm from the review, pres-
16 sure, or oversight of those whose involvement in
17 trading or clearing activities might potentially
18 bias their judgment or supervision; and
19 "(B) address such other issues as the
20 Commission determines appropriate.
21 "(j) STATUTORY DISQUALIFICATION.—Except to the
22 extent otherwise specifically provided by rule, regulation,
23 or order of the Commission, it shall be unlawful for a secu-
24 rity-based swap dealer or a major security-based swap par-
25 ticipant to permit any person associated with a security-

1 based swap dealer or a major security-based swap partici-
2 pant who is subject to a statutory disqualification to effect
3 or be involved in effecting security-based swaps on behalf
4 of such security-based swap dealer or major security-based
5 swap participant, if such security-based swap dealer or
6 major security-based swap participant knew, or in the ex-
7 ercise of reasonable care should have known, of such stat-
8 utory disqualification.

9 "(k) ENFORCEMENT AND ADMINISTRATIVE PRO-
10 CEEDING AUTHORITY.—

11 "(1) PRIMARY ENFORCEMENT AUTHORITY.—

12 "(A) SEC.—Except as provided in sub-
13 paragraph (B), the Commission shall have ex-
14 clusive authority to enforce the amendments
15 made by subtitle B of the Derivative Markets
16 Transparency and Accountability Act of 2009
17 with respect to any person.

18 "(B) PRUDENTIAL REGULATORS.—The
19 Prudential Regulators shall have exclusive au-
20 thority to enforce the provisions of section
21 15F(d) and other prudential requirements of
22 this Act with respect to banks, and branches or
23 agencies of foreign banks that are security-
24 based swap dealers or major security-based
25 swap participants.

1 "(C) REFERRAL.—

2 "(i) VIOLATIONS OF NONPRUDENTIAL
3 REQUIREMENTS.—If the Prudential Regu-
4 lator for a security-based swap dealer or
5 major security-based swap participant has
6 cause to believe that such security-based
7 swap dealer or major security-based swap
8 participant may have engaged in conduct
9 that constitutes a violation of the non-
10 prudential requirements of section 15F or
11 rules adopted by the Commission there-
12 under, that Prudential Regulator may rec-
13 ommend in writing to the Commission that
14 the Commission initiate an enforcement
15 proceeding as authorized under this Act.
16 The recommendation shall be accompanied
17 by a written explanation of the concerns
18 giving rise to the recommendation.

19 "(ii) VIOLATIONS OF PRUDENTIAL RE-
20 QUIREMENTS.—If the Commission has
21 cause to believe that a securities-based
22 swap dealer or major securities-based swap
23 participant that has a Prudential Regu-
24 lator may have engaged in conduct that
25 constitute a violation of the prudential re-

1 quirements of section 15F(e) or rules
2 adopted thereunder, the Commission may
3 recommend in writing to the Prudential
4 Regulator that the Prudential Regulator
5 initiate an enforcement proceeding as au-
6 thorized under this Act. The recommenda-
7 tion shall be accompanied by a written ex-
8 planation of the concerns giving rise to the
9 recommendation.
10 "(2) CENSURE, DENIAL, SUSPENSION; NOTICE
11 AND HEARING.—The Commission, by order, shall
12 censure, place limitations on the activities, functions,
13 or operations of, or revoke the registration of any se-
14 curity-based swap dealer or major security-based
15 swap participant that has registered with the Com-
16 mission pursuant to subsection (b) if it finds, on the
17 record after notice and opportunity for hearing, that
18 such censure, placing of limitations, or revocation is
19 in the public interest and that such security-based
20 swap dealer or major security-based swap partici-
21 pant, or any person associated with such security-
22 based swap dealer or major security-based swap par-
23 ticipant effecting or involved in effecting trans-
24 actions in security-based swaps on behalf of such se-
25 curity-based swap dealer or major security-based

1 swap participant, whether prior or subsequent to be-
2 coming so associated—
3 "(A) has committed or omitted any act, or
4 is subject to an order or finding, enumerated in
5 subparagraph (A), (D), or (E) of paragraph (4)
6 of section 15(b);
7 "(B) has been convicted of any offense
8 specified in subparagraph (B) of such para-
9 graph (4) within 10 years of the commencement
10 of the proceedings under this subsection;
11 "(C) is enjoined from any action, conduct,
12 or practice specified in subparagraph (C) of
13 such paragraph (4);
14 "(D) is subject to an order or a final order
15 specified in subparagraph (F) or (H), respec-
16 tively, of such paragraph (4); or
17 "(E) has been found by a foreign financial
18 regulatory authority to have committed or omit-
19 ted any act, or violated any foreign statute or
20 regulation, enumerated in subparagraph (G) of
21 such paragraph (4).
22 "(3) ASSOCIATED PERSONS.—With respect to
23 any person who is associated, who is seeking to be-
24 come associated, or, at the time of the alleged mis-
25 conduct, who was associated or was seeking to be-

1 come associated with a security-based swap dealer or
2 major security-based swap participant for the pur-
3 pose of effecting or being involved in effecting secu-
4 rity-based swaps on behalf of such security-based
5 swap dealer or major security-based swap partici-
6 pant, the Commission, by order, shall censure, place
7 limitations on the activities or functions of such per-
8 son, or suspend for a period not exceeding 12
9 months, or bar such person from being associated
10 with a security-based swap dealer or major security-
11 based swap participant, if the Commission finds, on
12 the record after notice and opportunity for a hear-
13 ing, that such censure, placing of limitations, sus-
14 pension, or bar is in the public interest and that
15 such person—
16 "(A) has committed or omitted any act, or
17 is subject to an order or finding, enumerated in
18 subparagraph (A), (D), or (E) of paragraph (4)
19 of section 15(b);
20 "(B) has been convicted of any offense
21 specified in subparagraph (B) of such para-
22 graph (4) within 10 years of the commencement
23 of the proceedings under this subsection;

1 "(C) is enjoined from any action, conduct,
2 or practice specified in subparagraph (C) of
3 such paragraph (4);
4 "(D) is subject to an order or a final order
5 specified in subparagraph (F) or (H), respec-
6 tively, of such paragraph (4); or
7 "(E) has been found by a foreign financial
8 regulatory authority to have committed or omit-
9 ted any act, or violated any foreign statute or
10 regulation, enumerated in subparagraph (G) of
11 such paragraph (4).
12 "(4) UNLAWFUL CONDUCT.—It shall be unlaw-
13 ful—
14 "(A) for any person as to whom an order
15 under paragraph (3) is in effect, without the
16 consent of the Commission, willfully to become,
17 or to be, associated with a security-based swap
18 dealer or major security-based swap participant
19 in contravention of such order; or
20 "(B) for any security-based swap dealer or
21 major security-based swap participant to permit
22 such a person, without the consent of the Com-
23 mission, to become or remain a person associ-
24 ated with the security-based swap dealer or
25 major security-based swap participant in con-

1 travention of such order, if such security-based
2 swap dealer or major security-based swap par-
3 ticipant knew, or in the exercise of reasonable
4 care should have known, of such order.''.

5 **SEC. 3205. REPORTING AND RECORDKEEPING.**

6 (a) The Securities Exchange Act of 1934 (15 U.S.C.
7 78a, et seq.) is amended by inserting after section 13 the
8 following section:

9 **''SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
10 **TAIN SECURITY-BASED SWAPS.**

11 ''(a) IN GENERAL.—Any person who enters into a se-
12 curity-based swap and—

13 ''(1) did not clear the security-based swap in
14 accordance with section 3A; and

15 ''(2) did not have data regarding the security-
16 based swap accepted by a security-based swap repos-
17 itory in accordance with rules adopted by the Com-
18 mission under section 13(n),

19 shall meet the requirements in subsection (b).

20 ''(b) REPORTS.—Any person described in subsection
21 (a) shall—

22 ''(1) make such reports in such form and man-
23 ner and for such period as the Commission shall pre-
24 scribe by rule or regulation regarding the security-
25 based swaps held by the person; and

1 "(2) keep books and records pertaining to the
2 security-based swaps held by the person in such
3 form and manner and for such period as may be re-
4 quired by the Commission, which books and records
5 shall be open to inspection by any representative of
6 the Commission, an appropriate Federal banking
7 agency, the Commodity Futures Trading Commis-
8 sion, the Financial Services Oversight Council, and
9 the Department of Justice.
10 "(c) IDENTICAL DATA.—In adopting rules under this
11 section, the Commission shall require persons described in
12 subsection (a) to report the same or more comprehensive
13 data than the Commission requires security-based swap
14 repositories to collect under subsection (n).".
15 (b) BENEFICIAL OWNERSHIP REPORTING.—
16 (1) Section 13(d)(1) of the Securities Exchange
17 Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by
18 inserting "or otherwise becomes or is deemed to be-
19 come a beneficial owner of any of the foregoing upon
20 the purchase or sale of a security-based swap or
21 other derivative instrument that the Commission
22 may define by rule, and" after "Alaska Native
23 Claims Settlement Act,"; and
24 (2) Section 13(g)(1) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by

1 inserting "or otherwise becomes or is deemed to be-
2 come a beneficial owner of any security of a class de-
3 scribed in subsection (d)(1) upon the purchase or
4 sale of a security-based swap or other derivative in-
5 strument that the Commission may define by rule"
6 after "subsection (d)(1) of this section".
7 (c) REPORTS BY INSTITUTIONAL INVESTMENT MAN-
8 AGERS.—Section 13(f)(1) of the Securities Exchange Act
9 of 1934 (15 U.S.C. 78m(f)(1)) is amended by inserting
10 "or otherwise becomes or is deemed to become a beneficial
11 owner of any security of a class described in subsection
12 (d)(1) upon the purchase or sale of a security-based swap
13 or other derivative instrument that the Commission may
14 define by rule," after "subsection (d)(1) of this section".
15 (d) ADMINISTRATIVE PROCEEDING AUTHORITY.—
16 Section 15(b)(4) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o(b)(4)) is amended—
18 (1) in subparagraph (C), by adding "security-
19 based swap dealer, major security-based swap partic-
20 ipant," after "government securities dealer,"; and
21 (2) in subparagraph (F), by adding ", or secu-
22 rity-based swap dealer, or a major security-based
23 swap participant" after "or dealer".

1 (e) DERIVATIVES BENEFICIAL OWNERSHIP.—Section
2 13 of the Securities Exchange Act of 1934 (15 U.S.C.
3 78m) is amended by adding at the end the following:
4 "(o) BENEFICIAL OWNERSHIP.—For purposes of this
5 section and section 16, a person shall be deemed to acquire
6 beneficial ownership of an equity security based on the
7 purchase or sale of a security-based swap or other deriva-
8 tive instrument only to the extent that the Commission,
9 by rule, determines after consultation with the Prudential
10 Regulators and the Secretary of the Treasury, that the
11 purchase or sale of the security-based swap or other deriv-
12 ative instrument, or class of security-based swaps or other
13 derivative instruments, provides incidents of ownership
14 comparable to direct ownership of the equity security, and
15 that it is necessary to achieve the purposes of this section
16 that the purchase or sale of the security-based swaps or
17 instrument, or class of security-based swap or instru-
18 ments, be deemed the acquisition of beneficial ownership
19 of the equity security.".

20 **SEC. 3206. STATE GAMING AND BUCKET SHOP LAWS.**

21 Section 28(a) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78bb(a)) is amended to read as follows:
23 "(a) Except as provided in subsection (f), the rights
24 and remedies provided by this title shall be in addition
25 to any and all other rights and remedies that may exist

1 at law or in equity; but no person permitted to maintain
2 a suit for damages under the provisions of this title shall
3 recover, through satisfaction of judgment in one or more
4 actions, a total amount in excess of his actual damages
5 on account of the act complained of. Except as otherwise
6 specifically provided in this title, nothing in this title shall
7 affect the jurisdiction of the securities commission (or any
8 agency or officer performing like functions) of any State
9 over any security or any person insofar as it does not con-
10 flict with the provisions of this title or the rules and regu-
11 lations thereunder. No State law which prohibits or regu-
12 lates the making or promoting of wagering or gaming con-
13 tracts, or the operation of 'bucket shops' or other similar
14 or related activities, shall invalidate (1) any put, call,
15 straddle, option, privilege, or other security subject to this
16 title (except any security that has a pari-mutuel payout
17 or otherwise is determined by the Commission, acting by
18 rule, regulation, or order, to be appropriately subject to
19 such laws), or apply to any activity which is incidental or
20 related to the offer, purchase, sale, exercise, settlement,
21 or closeout of any such security, (2) any security-based
22 swap between eligible contract participants, or (3) any se-
23 curity-based swap effected on a national securities ex-
24 change registered pursuant to section 6(b). No provision
25 of State law regarding the offer, sale, or distribution of

1 securities shall apply to any transaction in a security-
2 based swap or a security futures product, except that this
3 sentence shall not be construed as limiting any State anti-
4 fraud law of general applicability. A security-based swap
5 may not be regulated as an insurance contract under State
6 law.".

7 **SEC. 3207. AMENDMENTS TO THE SECURITIES ACT OF 1933;**
8 **TREATMENT OF SECURITY-BASED SWAPS.**

9 (a) DEFINITIONS.—Section 2(a) of the Securities Act
10 of 1933 (15 U.S.C. 77b(a)) is amended—

11 (1) in paragraph (1), by inserting "security-
12 based swap," after "security future,";

13 (2) in paragraph (3) by adding at the end the
14 following: "Any offer or sale of a security-based
15 swap by or on behalf of the issuer of the securities
16 upon which such security-based swap is based or is
17 referenced, an affiliate of the issuer, or an under-
18 writer, shall constitute a contract for sale of, sale of,
19 offer for sale, or offer to sell such securities."; and

20 (3) by adding at the end the following:

21 "(17) The terms 'swap' and 'security-based
22 swap' have the same meanings as provided in sec-
23 tions 1a(35) of the Commodity Exchange Act (7
24 U.S.C. 1a(35)) and section 3(a)(68) of the Securi-
25 ties Exchange Act of 1934.

1 "(18) The terms 'purchase' or 'sale' of a secu-
2 rity-based swap shall be deemed to mean the execu-
3 tion, termination (prior to its scheduled maturity
4 date), assignment, exchange, or similar transfer or
5 conveyance of, or extinguishing of rights or obliga-
6 tions under, a security-based swap, as the context
7 may require.".
8 (b) EXEMPTION FROM REGISTRATION.—Section 3(a)
9 of the Securities Act of 1933 is amended by adding at
10 the end the following:
11 "(15) Any security-based swap, as defined in
12 section 2(a)(17) that is not otherwise a security as
13 defined in section 2(a)(1) and that satisfies such
14 conditions as established by rule or regulation by the
15 Commission consistent with the provisions of the
16 Derivative Markets Transparency and Accountability
17 Act of 2009. The Commission shall promulgate rules
18 implementing this exemption.".
19 (c) REGISTRATION OF SECURITY-BASED SWAPS.—
20 Section 5 of the Securities Act of 1933 (15 U.S.C. 77e)
21 is amended by adding at the end the following:
22 "(d) Notwithstanding the provisions of section 3 or
23 section 4, unless a registration statement meeting the re-
24 quirements of subsection (a) of section 10 is in effect as
25 to a security-based swap, it shall be unlawful for any per-

1 son, directly or indirectly, to make use of any means or
2 instruments of transportation or communication in inter-
3 state commerce or of the mails to offer to sell, offer to
4 buy or purchase or sell a security-based swap to any per-
5 son who is not an eligible contract participant as defined
6 in section 1a(12) of the Commodity Exchange Act (7
7 U.S.C. 1a(12)).".

8 **SEC. 3208. OTHER AUTHORITY.**

9 Unless otherwise provided by its terms, this subtitle
10 does not divest any appropriate Federal banking agency,
11 the Commission, the Commodity Futures Trading Com-
12 mission, or other Federal or State agency, of any authority
13 derived from any other applicable law.

14 **SEC. 3209. JURISDICTION.**

15 (a) Section 36 of the Securities Exchange Act of
16 1934 (15 U.S.C. 78mm) is amended by adding at the end
17 the following new subsection:

18 "(c) DERIVATIVES.—The Commission shall not grant
19 exemptions from the security-based swap provisions of the
20 Derivative Markets Transparency and Accountability Act
21 of 2009, except as expressly authorized under the provi-
22 sions of that Act.".

23 (b) Section 30 of the Securities Exchange Act of
24 1934 is amended by adding at the end the following:

1 "(c) No provision of this Act that was added by the
2 Derivative Markets Transparency and Accountability Act
3 of 2009 or any rule or regulation thereunder shall apply
4 to any person insofar as such person transacts a business
5 in security-based swaps without the jurisdiction of the
6 United States unless he transacts such business in con-
7 travention of such rules and regulations as the Commis-
8 sion may prescribe as necessary or appropriate to prevent
9 the evasion of any provision of this Act that was added
10 by the Derivative Markets Transparency and Account-
11 ability Act of 2009. This subsection shall not be construed
12 to limit the jurisdiction of the Commission under any pro-
13 vision of this Act as in effect prior to enactment of the
14 Derivative Markets Transparency and Accountability Act
15 of 2009.".

16 **SEC. 3210. EFFECTIVE DATE.**

17 (a) Unless otherwise provided, the provisions of this
18 subtitle shall become effective the later of 270 days after
19 the date of the enactment of this subtitle or, to the extent
20 a provision of this subtitle requires rulemaking, no less
21 than 60 days after publication of a final rule or regulation
22 implementing such provision of this subtitle.

23 (b) Subsection (a) shall not preclude the Securities
24 Exchange Commission from any rulemaking required to
25 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,

1 United States Code," and inserting "the Commis-
2 sions established under section 15301 of title 40,
3 United States Code, the Board of Governors of the
4 Federal Reserve System, the Commodity Futures
5 Trading Commission, the National Credit Union Ad-
6 ministration, the Pension Benefit Guaranty Corpora-
7 tion, the Securities and Exchange Commission, or
8 the Director of the Consumer Financial Protection
9 Agency,".

10 (b) EXCLUSION FROM DEFINITION OF DESIGNATED
11 FEDERAL ENTITY.—Section 8G(a)(2) of the Inspector
12 General Act of 1978 (5 U.S.C. App.) is amended—

13 (1) by striking "the Board of Governors of the
14 Federal Reserve System,";

15 (2) by striking "the Commodity Futures Trad-
16 ing Commission,";

17 (3) by striking "the National Credit Union Ad-
18 ministration,"; and

19 (4) by striking "the Pension Benefit Guaranty
20 Corporation, the Securities and Exchange Commis-
21 sion,".

1 **SEC. 3302. CONTINUATION OF PROVISIONS RELATING TO**
2 **PERSONNEL.**

3 (a) IN GENERAL.—The Inspector General Act of
4 1978 (5 U.S.C. App.) is amended by inserting after sec-
5 tion 8L the following:

6 **"SEC. 8M. SPECIAL PROVISIONS CONCERNING CERTAIN ES-**
7 **TABLISHMENTS.**

8 "(a) DEFINITION.—For purposes of this section, the
9 term 'covered establishment' means the Board of Gov-
10 ernors of the Federal Reserve System, the Commodity Fu-
11 tures Trading Commission, the National Credit Union Ad-
12 ministration, the Pension Benefit Guaranty Corporation,
13 and the Securities and Exchange Commission.

14 "(b) PROVISIONS RELATING TO ALL COVERED ES-
15 TABLISHMENTS.—

16 "(1) PROVISIONS RELATING TO INSPECTORS
17 GENERAL.—In the case of the Inspector General of
18 a covered establishment, subsections (b) and (c) of
19 section 4 of the Inspector General Reform Act of
20 2008 (Public Law 110–409) shall apply in the same
21 manner as if such covered establishment were a des-
22 ignated Federal entity under section 8G. An Inspec-
23 tor General who is subject to the preceding sentence
24 shall not be subject to section 3(e).

25 "(2) PROVISIONS RELATING TO OTHER PER-
26 SONNEL.—Notwithstanding paragraphs (7) and (8)

1 of section 6(a), the Inspector General of a covered
2 establishment may select, appoint, and employ such
3 officers and employees as may be necessary for car-
4 rying out the functions, powers, and duties of the
5 Office of Inspector General of such establishment
6 and to obtain the temporary or intermittent services
7 of experts or consultants or an organization of ex-
8 perts or consultants, subject to the applicable laws
9 and regulations that govern such selections, appoint-
10 ments, and employment, and the obtaining of such
11 services, within such establishment.

12 "(c) PROVISION RELATING TO THE BOARD OF GOV-
13 ERNORS OF THE FEDERAL RESERVE SYSTEM.—The pro-
14 visions of subsection (a) of section 8D (other than the pro-
15 visions of subparagraphs (A), (B), (C), and (E) of para-
16 graph (1) of such subsection (a)) shall apply to the Inspec-
17 tor General of the Board of Governors of the Federal Re-
18 serve System and the Chairman of the Board of Governors
19 of the Federal Reserve System in the same manner as
20 such provisions apply to the Inspector General of the De-
21 partment of the Treasury and the Secretary of the Treas-
22 ury, respectively.".

23 (b) CONFORMING AMENDMENT.—Paragraph (3) of
24 section 8G(g) of the Inspector General Act of 1978 (5
25 U.S.C. App.) is repealed.

1 **SEC. 3303. CORRECTIVE RESPONSES BY HEADS OF CER-**
2 **TAIN ESTABLISHMENTS TO DEFICIENCIES**
3 **IDENTIFIED BY INSPECTORS GENERAL.**

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

10 (1) take action to address deficiencies identified
11 by a report or investigation of the Inspector General
12 of the establishment concerned; or

13 (2) certify to both Houses of Congress that no
14 action is necessary or appropriate in connection with
15 a deficiency described in paragraph (1).

16 **SEC. 3304. EFFECTIVE DATE; TRANSITION RULE.**

17 (a) EFFECTIVE DATE.—This subtitle and the amend-
18 ments made by this subtitle shall take effect 30 days after
19 the date of the enactment of this subtitle.

20 (b) TRANSITION RULE.—An individual serving as In-
21 spector General of the Board of Governors of the Federal
22 Reserve System, the Commodity Futures Trading Com-
23 mission, the National Credit Union Administration, the
24 Pension Benefit Guaranty Corporation, or the Securities
25 and Exchange Commission on the effective date of this
26 subtitle pursuant to an appointment made under section

1 8G of the Inspector General Act of 1978 (5 U.S.C.
2 App.)—
3 (1) may continue so serving until the President
4 makes an appointment under section 3(a) of such
5 Act with respect to the Board of Governors of the
6 Federal Reserve System, the Commodity Futures
7 Trading Commission, the National Credit Union Ad-
8 ministration, the Pension Benefit Guaranty Corpora-
9 tion, or the Securities and Exchange Commission, as
10 the case may be, consistent with the amendments
11 made by section 301; and
12 (2) shall, while serving under paragraph (1), re-
13 main subject to the provisions of section 8G of such
14 Act which, immediately before the effective date of
15 this subtitle, applied with respect to the Inspector
16 General of the Board of Governors of the Federal
17 Reserve System, the Commodity Futures Trading
18 Commission, the National Credit Union Administra-
19 tion, the Pension Benefit Guaranty Corporation, or
20 the Securities and Exchange Commission, as the
21 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.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERSON, COLLIN OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

114

AMENDMENT TO H.R. 4173

OFFERED BY MR. PETERSON OF MINNESOTA

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.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LYNCH, STEPHEN OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Revised 135
2nd

F:\P11\FR\AMDS\LYNCH_04D.XML

AMENDMENT TO H.R. 4173

OFFERED BY MR. LYNCH OF MASSACHUSETTS

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

1 **SEC. _____. CONFLICTS OF INTEREST IN CLEARING ORGA-**
2 **NIZATIONS.**

3 (a) COMMODITY EXCHANGE ACT.—

4 (1) DEFINITION OF RESTRICTED OWNER.—Sec-
5 tion 1a of the Commodity Exchange Act (7 U.S.C.
6 1a) (as amended by the preceding provisions of this
7 Act) is further amended by adding at the end the
8 following:

9 "(51) RESTRICTED OWNER.—The term 're-
10 stricted owner' means any swap dealer, security-
11 based swap dealer, major swap participant, or major
12 security-based swap participant, that is an identified
13 financial holding company as defined in Section
14 1000(b)(5) of the Financial Stability Improvement
15 Act of 2009, or a person associated with a swap
16 dealer or a major swap participant that is an identi-
17 fied financial holding company, or a person associ-
18 ated with a security-based swap dealer or major se-

1 curity-based swap participant that is an identified fi-
2 nancial holding company.".
3 (2) CONFLICTS OF INTEREST.—
4 (A) Subparagraph (P) of section 5b(c)(2)
5 of the Commodity Exchange Act (as added by
6 the preceding provisions of this Act) is amended
7 by adding at the end of such subparagraph the
8 following: "The rules of the derivatives clearing
9 organization that clears swaps shall provide
10 that a restricted owner shall not be permitted
11 directly or indirectly to acquire beneficial own-
12 ership of interests in the organization or in per-
13 sons with a controlling interest in the organiza-
14 tion, to the extent that such an acquisition
15 would result in restricted owners being entitled
16 to vote, cause the voting of, or cause the with-
17 holding of votes of, more than 20 percent of the
18 votes entitled to be cast on any matter by the
19 holders of the ownership interests. The rules of
20 the derivatives clearing organization shall pro-
21 vide that a majority of the directors of the or-
22 ganization shall not be associated with a re-
23 stricted owner. This subparagraph shall not be
24 construed to require divestiture of any interest
25 of a restricted owner in an established and

1 operational derivatives clearing organization ac-
2 quired prior to January 1, 2010, provided that
3 acquisitions by such restricted owner after such
4 date shall be subject to this subparagraph. The
5 Commission may determine whether any acqui-
6 sition by a restricted owner during any interim
7 period prior to the date of the enactment of this
8 Act has been made for the purpose of avoiding
9 the effect of this subparagraph.".
10 (B) Section 4s(g)(1) of the Commodity Ex-
11 change Act (as added by the preceding provi-
12 sions of this Act) is amended—
13 (i) by striking "and" at the end of
14 subparagraph (C); and
15 (ii) by redesignating subparagraph
16 (D) as subparagraph (E) and insert after
17 subparagraph (C) the following:
18 "(D) the prevention of self-dealing, by lim-
19 iting the extent to which such a swap dealer or
20 major swap participant may conduct business
21 with a derivatives clearing organization, a board
22 of trade, or an alternative swap execution facil-
23 ity that clears or trades swaps and in which
24 such a swap dealer or major swap participant
25 has a material debt or equity investment; and".

1 (C) Paragraph (12) of section 5h(d) of the
2 Commodity Exchange Act (as added by the pre-
3 ceding provisions of this Act) is amended by
4 adding at the end the following new subpara-
5 graph:
6 "(C) The rules of the swap execution facil-
7 ity shall provide that a restricted owner shall
8 not be permitted directly or indirectly to ac-
9 quire beneficial ownership of interests in the fa-
10 cility or in persons with a controlling interest in
11 the facility, to the extent that such an acquisi-
12 tion would result in restricted owners being en-
13 titled to vote, cause the voting of, or cause the
14 withholding of votes of, more than 20 percent
15 of the votes entitled to be cast on any matter
16 by the holders of the ownership interests. This
17 subparagraph shall not be construed to require
18 divestiture of any interest of a restricted owner
19 in an established and operational swap execu-
20 tion facility acquired prior to January 1, 2010,
21 provided that acquisitions by such restricted
22 owner after such date shall be subject to this
23 subparagraph. The Commission may determine
24 whether any acquisition by a restricted owner
25 during any interim period prior to the date of

1 the enactment of this Act has been made for
2 the purpose of avoiding the effect of this sub-
3 paragraph.
4 "(D) The rules of the swap execution facil-
5 ity shall provide that a majority of the directors
6 of the facility shall not be associated with a re-
7 stricted owner.".
8 (D) Section 5(d) of the Commodity Ex-
9 change Act (as amended by the preceding provi-
10 sions of this Act) is further amended by strik-
11 ing paragraph (15) and inserting the following:
12 "(15) CONFLICTS OF INTEREST.—
13 "(A) The board of trade shall establish
14 and enforce rules to minimize conflicts of inter-
15 est in the decisionmaking process of the con-
16 tract market, and establish a process for resolv-
17 ing any such conflicts of interest.
18 "(B) The rules of a board of trade that
19 trades swaps shall provide that a restricted
20 owner shall not be permitted directly or indi-
21 rectly to acquire beneficial ownership of inter-
22 ests in the board of trade or in persons with a
23 controlling interest in the board of trade, to the
24 extent that such an acquisition would result in
25 restricted owners being entitled to vote, cause

1 the voting of, or cause the withholding of votes
2 of, more than 20 percent of the votes entitled
3 to be cast on any matter by the holders of the
4 ownership interests. This paragraph shall not
5 be construed to require divestiture of any inter-
6 est of a restricted owner in an established and
7 operational board of trade acquired prior to
8 January 1, 2010, provided that acquisitions by
9 such restricted owner after such date shall be
10 subject to this paragraph. The Commission may
11 determine whether any acquisition by a re-
12 stricted owner during any interim period prior
13 to the date of the enactment of this Act has
14 been made for the purpose of avoiding the ef-
15 fect of this paragraph.
16 "(C) The rules of a board of trade that
17 trades swaps shall provide that a majority of
18 the directors of the board of trade shall not be
19 associated with a restricted owner.".
20 (b) SECURITIES EXCHANGE ACT OF 1934.—
21 (1) DEFINITION OF RESTRICTED OWNER.—Sec-
22 tion 3(a) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)) (as amended by the preceding
24 provisions of this Act) is further amended by adding
25 at the end the following:

1 "(78) RESTRICTED OWNER.—The term 're-
2 stricted owner' has the same meaning as in section
3 1a(51) of the Commodity Exchange Act.".
4 (2) CONFLICTS OF INTEREST.—
5 (A) Paragraph (10) of section 3C(d) of the
6 Securities Exchange Act of 1934 (as added by
7 the preceding provisions of this Act) is amended
8 by adding after subparagraph (B) the following:
9 "The rules of the swap execution facility shall provide that
10 a restricted owner shall not be permitted directly or indi-
11 rectly to acquire beneficial ownership of interests in the
12 facility or in persons with a controlling interest in the fa-
13 cility, to the extent that such an acquisition would result
14 in restricted owners being entitled to vote, cause the voting
15 of, or cause the withholding of votes of, more than 20 per-
16 cent of the votes entitled to be cast on any matter by the
17 holders of the ownership interests. The rules of the swap
18 execution facility shall provide that a majority of the direc-
19 tors of the facility shall not be associated with a restricted
20 owner. This paragraph shall not be construed to require
21 divestiture of any interest of a restricted owner in an es-
22 tablished and operational swap execution facility acquired
23 prior to January 1, 2010, provided that acquisitions by
24 such restricted owner after such date shall be subject to
25 this paragraph. The Commission may determine whether

1 any acquisition by a restricted owner during any interim
2 period prior to the date of the enactment of this Act has
3 been made for the purpose of avoiding the effect of this
4 paragraph.".

5 (B) Section 15F(g)(1) of the Securities
6 Exchange Act of 1934 (as added by the pre-
7 ceding provisions of this Act) is amended—

8 (i) in subparagraph (C), strike "and";
9 and

10 (ii) insert after subparagraph (C) the
11 following (and redesignate the succeeding
12 subparagraph accordingly):

13 "(D) the prevention of self-dealing by lim-
14 iting the extent to which a security-based swap
15 dealer or major security-based swap participant
16 may conduct business with a clearing agency,
17 an exchange, or an alternative swap execution
18 facility that clears or trades security-based
19 swaps and in which such a dealer or participant
20 has a material debt or equity investment; and".

21 (C) Section 6(b) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78f(b)) is
23 amended by adding at the end the following
24 new paragraphs:

1 "(10) The rules of the exchange minimize con-
2 flicts of interest in its decision-making process and
3 establish a process for resolving such conflicts of in-
4 terest.
5 "(11) The rules of an exchange that trades se-
6 curity-based swaps provide that a majority of the di-
7 rectors of the exchange shall not be associated with
8 a restricted owner.
9 "(12) The rules of an exchange that trades se-
10 curity-based swaps provide that a restricted owner
11 shall not be permitted directly or indirectly to ac-
12 quire beneficial ownership of interests in the ex-
13 change or in persons with a controlling interest in
14 the exchange, to the extent that such an acquisition
15 would result in restricted owners being entitled to
16 vote, cause the voting of, or cause the withholding
17 of votes of, more than 20 percent of the votes enti-
18 tled to be cast on any matter by the holders of the
19 ownership interests. This paragraph shall not be
20 construed to require divestiture of any interest of a
21 restricted owner in an established and operational
22 exchange acquired prior to January 1, 2010, pro-
23 vided that acquisitions by such restricted owner
24 after such date shall be subject to this paragraph.
25 The Commission may determine whether any acqui-

1 sition by a restricted owner during any interim pe-
2 riod prior to the date of the enactment of this Act
3 has been made for the purpose of avoiding the effect
4 of this paragraph.".
5 (D) Section 17A(b)(3) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78f(b)) is
7 amended by adding at the end the following
8 new subparagraphs:
9 "(J) The rules of a clearing agency that
10 clears security-based swaps shall provide that a
11 restricted owner shall not be permitted directly
12 or indirectly to acquire beneficial ownership of
13 interests in the agency or in persons with a con-
14 trolling interest in the agency, to the extent
15 that such an acquisition would result in re-
16 stricted owners being entitled to vote, cause the
17 voting of, or cause the withholding of votes of,
18 more than 20 percent of the votes entitled to be
19 cast on any matter by the holders of the owner-
20 ship interests. This subparagraph shall not be
21 construed to require divestiture of any interest
22 of a restricted owner in an established and
23 operational clearing agency acquired prior to
24 January 1, 2010, provided that acquisitions by
25 such restricted owner after such date shall be

1 subject to this subparagraph. The Commission
2 may determine whether any acquisition by a re-
3 stricted owner during any interim period prior
4 to the date of the enactment of this Act has
5 been made for the purpose of avoiding the ef-
6 fect of this subparagraph.
7 "(K) The rules of the clearing agency shall
8 provide that a majority of the directors of the
9 agency shall not be associated with a restricted
10 owner.".

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MURPHY, SCOTT OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

2nd Rev 129

AMENDMENT TO H.R. 4173

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

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

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

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

8 "(39) MAJOR SWAP PARTICIPANT.—

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

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

1 "(ii) whose outstanding swaps create
2 substantial net counterparty exposure that
3 could have serious adverse effects on the
4 financial stability of the United States
5 banking system or financial markets.
6 "(B) DEFINITION OF SUBSTANTIAL NET
7 POSITION.—The Commission shall define by
8 rule or regulation the term 'substantial net po-
9 sition' at a threshold that the Commission de-
10 termines prudent for the effective monitoring,
11 management, and oversight of entities which
12 are systemically important or can significantly
13 impact the financial system. In setting the defi-
14 nitions, the Commission shall consider the per-
15 son's relative position in uncleared as opposed
16 to cleared swaps.
17 "(C) A person may be designated a major
18 swap participant for 1 or more individual types
19 of swaps without being classified as a major
20 swap participant for all classes of swaps.".
21 (b) MAJOR SECURITY-BASED SWAP PARTICIPANT.—
22 Section 3(a)(67) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78c(a)), as added by the preceding provisions
24 of this Act, is amended to read as follows:

1 "(67) MAJOR SECURITY-BASED SWAP PARTICI-
2 PANT.—
3 "(A) IN GENERAL.—The term 'major secu-
4 rity-based swap participant' means any person
5 who is not a security-based swap dealer, and—
6 "(i) maintains a substantial net posi-
7 tion in outstanding security-based swaps,
8 excluding positions held primarily for hedg-
9 ing, reducing or otherwise mitigating its
10 commercial risk; or
11 "(ii) whose outstanding security-based
12 swaps create substantial net counterparty
13 exposure that could have serious adverse
14 effects on the financial stability of the
15 United States banking system or financial
16 markets.
17 "(B) DEFINITION OF SUBSTANTIAL NET
18 POSITION.—The Commission shall define by
19 rule or regulation the term 'substantial net po-
20 sition' at a threshold that the Commission de-
21 termines prudent for the effective monitoring,
22 management, and oversight of entities which
23 are systemically important or can significantly
24 impact the financial system. In setting the defi-
25 nitions, the Commission shall consider the per-

1 son's relative position in uncleared as opposed
2 to cleared security-based swaps.
3 "(C) A person may be designated a major
4 security-based swap participant for 1 or more
5 individual types of security-based swaps without
6 being classified as a major security-based swap
7 participant for all classes of security-based
8 swaps.".
9 (c) EFFECTIVE DATES.—
10 (1) MAJOR SWAP PARTICIPANT.—The amend-
11 ment made by subsection (a)(1) shall take effect as
12 if included in subtitle A.
13 (2) MAJOR SECURITY-BASED SWAP PARTICI-
14 PANT.—The amendment made by subsection (a)(2)
15 shall take effect as if included in subtitle B.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK, BARNEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

66

AMENDMENT TO H.R. 4173

OFFERED BY MR. FRANK OF MASSACHUSETTS

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

1 may impose a margin or collateral requirement with
2 respect to a security-based swap a counterparty to
3 which is an end user (other than an end user de-
4 scribed in paragraph (1)), and the other
5 counterparty to which is a security-based swap deal-
6 er or major security-based swap participant for
7 which there is no Prudential Regulator.

8 (b) REQUIREMENTS.—Any margin or collateral re-
9 quirement imposed under subsection (a) with respect to
10 a transaction shall be commensurate with the risk involved
11 in the transaction, and allow for the use of non-cash collat-
12 eral.

13 (c) LIMITATION ON APPLICABILITY.—This section
14 shall not apply to a swap or security-based swap entered
15 into before the end of the 90-day period that begins with
16 the effective date of this section.

17 (d) DEFINITIONS.—In this section:

18 (1) END USER.—The term "end user" means a
19 person who is not a swap dealer, security-based swap
20 dealer, major swap participant, or major security-
21 based swap participant.

22 (2) OTHER TERMS.—The other terms shall
23 have the meanings given the terms in section 1a of
24 the Commodity Exchange Act.

25 (e) EFFECTIVE DATE.—

1 (1) PRUDENTIAL REGULATORS.—Subsection
2 (a)(1) shall take effect—
3 (A) with respect to swaps, as if included in
4 subtitle A; and
5 (B) with respect to security-based swaps,
6 as if included in subtitle B.
7 (2) COMMODITY FUTURES TRADING COMMIS-
8 SION.—Subsection (a)(2) shall take effect as if in-
9 cluded in subtitle A.
10 (3) SECURITIES AND EXCHANGE COMMIS-
11 SION.—Subsection (a)(3) shall take effect as if in-
12 cluded in subtitle B.

☒

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STUPAK, BART OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Stupak #47
Revised

AMENDMENT TO H.R. 4173

OFFERED BY MR. STUPAK OF MICHIGAN

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

Stupak Revised #47

1 or through a swap execution facility reg-
2 istered with the Commission.
3 "(ii) ADDITIONAL EXCEPTIONS.—
4 Clause (i) shall not apply to a swap if no
5 swap execution facility makes the swap
6 available to trade or execute.
7 "(iii) RULE OF INTERPRETATION.—
8 This subparagraph shall not be interpreted
9 to require any swap to be cleared.".
10 (b) SECURITY-BASED SWAPS.—Section 5A(a) of the
11 Securities Exchange Act of 1934, as added by the pre-
12 ceding provisions of this Act, is amended—
13 (1) in paragraph (1), by striking "section 3B
14 and where both counterparties are either swap deal-
15 ers or major swap participants, such counterparties"
16 and inserting "section 3B(a)(1), the parties"; and
17 (2) by redesignating paragraph (3) as para-
18 graph (4) and inserting after paragraph (2) the fol-
19 lowing:
20 "(3) CERTAIN SECURITY-BASED SWAPS NOT RE-
21 QUIRED TO BE CLEARED.—
22 "(A) IN GENERAL.—A security-based swap
23 that qualifies for the exception of section
24 3B(h)(1)(A) shall not be executed except on a

Stupak #47 Revised

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.

☒

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE STUPAK, BART OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

48

AMENDMENT TO H.R. 4173

OFFERED BY MR. STUPAK OF MICHIGAN

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 DETERMINMING 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".

1 (b) Section 2(j)(8)(A)(ii) of the Commodity Exchange
2 Act (7 U.S.C. 2), as added by the preceding provisions
3 of this Act, is amended by striking "or balance sheet".
4 (c) Section 3(a)(67)(A)(i) of the Securities Exchange
5 Act of 1934 (15 U.S.C. 78c(a)), as added by the preceding
6 provisions of this Act, is amended by striking "and bal-
7 ance sheet".
8 (d) Section 3B(h)(1)(B) of the Securities Exchange
9 Act of 1934, as added by the preceding provisions of this
10 Act, is amended by striking "and balance sheet".
11 (e)(1) The amendments made by subsections (a) and
12 (b) shall take effect as if included in subtitle A.
13 (2) The amendments made by subsections (c) and (d)
14 shall take effect as if included in subtitle B.
15 **SEC. _____. LEGAL CERTAINTY OF CERTAIN SWAP CON-**
16 **TRACTS.**
17 (a) IN GENERAL.—Section 22(a) of the Commodity
18 Exchange Act (7 U.S.C. 25(a)), as amended by the pre-
19 ceding provisions of this Act, is amended—
20 (1) in paragraph (4)(A), by inserting ", and en-
21 tered into before the effective date of this para-
22 graph," after "investor";
23 (2) in paragraph (4)(B), by inserting ", and en-
24 tered into before the effective date of this para-

1 graph," after "between eligible contract partici-
2 pants"; and
3 (3) in paragraph (5), by inserting ", and en-
4 tered into before the effective date of this para-
5 graph," after "United States".
6 (b) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect as if included in subtitle A.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MATSUI, DORIS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

Revised

231

AMENDMENT TO H.R. 4173

OFFERED BY MS. MATSUI OF CALIFORNIA

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

1 a World Wide Web site of the Secretary, and by sub-
2 mitting a report to the Congress, that shall includes
3 the following information:
4 (A) The number of requests for mortgage
5 modifications under the Program that the
6 servicer or lender has received.
7 (B) The number of requests for mortgage
8 modifications under the Program that the
9 servicer or lender has processed.
10 (C) The number of requests for mortgage
11 modifications under the Program that the
12 servicer or lender has approved.
13 (D) The number of requests for mortgage
14 modifications under the Program that the
15 servicer or lender has denied.
16 (2) Not more than 60 days after each monthly
17 deadline for submission of data by mortgage
18 servicers and lenders participating in the Program,
19 the Secretary shall make data tables available to the
20 public at the individual record level. The Secretary
21 shall issue regulations prescribing—
22 (A) the procedures for disclosing such data
23 to the public; and
24 (B) such deletions as the Secretary may
25 determine to be appropriate to protect any pri-

1 vacy interest of any mortgage modification ap-
2 plicant, including the deletion or alteration of
3 the applicant's name and identification number.

☒

11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PAULSEN, ERIK OF MINNESOTA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. PAULSEN OF MINNESOTA

1 Page 21, line 23, insert "and shall not be excluded from any of the Council's proceedings,
2 meetings, discussions and deliberations" after "advisory capacity ":

12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KANJORSKI, PAUL OF PENNSYLVANIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

S 1

AMENDMENT TO H.R. 4173

OFFERED BY MR. KANJORSKI OF PENNSYLVANIA, MR. FRANK OF MASSACHUSETTS, MR. SARBANES OF MARYLAND, AND MR. COHEN OF TENNESSEE

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.

☒

13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARSHALL, JIM OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Rev 27

AMENDMENT TO H.R. 4173

OFFERED BY MR. MARSHALL OF GEORGIA

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.

14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MCCARTHY, KEVIN OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

MCCACA_003: Strike CRA Liability

168

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. MCCARTHY OF CALIFORNIA

Strike section 6012 (relating to "Effect of Rule 436(G)").

15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE COHEN, STEVE OF TENNESSEE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

46

AMENDMENT TO H.R. 4173

OFFERED BY MR. COHEN OF TENNESSEE AND MR. FRANK OF MASSACHUSETTS

Page 1126, line 6, strike "subsections" and insert "subsection".

Page 1126, strike lines 15 through 25.

☒

16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE PETERS, GARY OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Revised # 22

AMENDMENT TO H.R. 4173

OFFERED BY MR. PETERS OF MICHIGAN

Page 402, after line 18, insert the following subparagraph:

1 (E) ADDITIONAL AUTHORIZED ASSESS-
2 MENTS.—The Corporation is authorized to con-
3 duct risk-based assessments on financial compa-
4 nies in such amount and manner and subject to
5 terms and conditions that the Corporation de-
6 termines, with the concurrence of the Secretary
7 of the Treasury and the Federal Reserve Board,
8 are necessary to pay any shortfall in the Trou-
9 bled Asset Relief Program established by the
10 Emergency Economic Stabilization Act of 2008
11 that would add to the deficit or national debt,
12 as identified by the Director of the Office of
13 Management and Budget, in consultation with
14 the Director of the Congressional Budget Office
15 pursuant to section 134 of such Act (12 U.S.C.
16 § 5239).

17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT, MELVIN OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

219

AMENDMENT TO H.R. 4173

OFFERED BY MR. WATT OF NORTH CAROLINA

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, repair, 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 in-

1 volves the extension of retail credit or retail
2 leases involving motor vehicles, and in which—
3 (i) the extension of retail credit or re-
4 tail leases is provided directly to con-
5 sumers; and
6 (ii) the contracts governing such ex-
7 tensions of retail credit or retail leases are
8 not assigned to a third party finance or
9 leasing source, except on a de minimis
10 basis.

☒

18. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE FRANK, BARNEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

F:\P11\FR\AMDS\FRANK_02.XML

65

AMENDMENT TO H.R. 4173

OFFERED BY MR. FRANK OF MASSACHUSETTS

AND MR. KANJORSKI OF PENNSYLVANIA

Strike section 6005 and redesignate the subsequent sections in subtitle B of title V and conform the table of contents in section 2 accordingly.

☒

19. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS JR., JOHN OF MICHIGAN OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

REVISED #20

AMENDMENT TO H.R. 4173

OFFERED BY MR. CONYERS OF MICHIGAN

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

1 dues, ground rent, and special assessments) on
2 a loan secured by a senior security interest in
3 the principal residence of the debtor, to a per-
4 centage of the debtor's income in accordance
5 with such guidelines, without any period of neg-
6 ative amortization or under which the aggregate
7 amount of the regular periodic payments would
8 not fully amortize the outstanding principal
9 amount of such loan;
10 "(B) requires no fees or charges to be paid
11 by the debtor in order to obtain such modifica-
12 tion; and
13 "(C) permits the debtor to continue to
14 make payments under the modification agree-
15 ment notwithstanding the filing of a case under
16 this title, as if such case had not been filed.".
17 **SEC. 9002. ELIGIBILITY FOR RELIEF.**
18 Section 109 of title 11, United States Code, is
19 amended—
20 (1) by adding at the end of subsection (e) the
21 following: "For purposes of this subsection, the com-
22 putation of debts shall not include the secured or
23 unsecured portions of—
24 "(1) debts secured by the debtor's principal res-
25 idence if the value of such residence as of the date

1 of the order for relief under chapter 13 is less than
2 the applicable maximum amount of noncontingent,
3 liquidated, secured debts specified in this subsection;
4 or
5 "(2) debts secured or formerly secured by what
6 was the debtor's principal residence that was sold in
7 foreclosure or that the debtor surrendered to the
8 creditor if the value of such real property as of the
9 date of the order for relief under chapter 13 was less
10 than the applicable maximum amount of noncontin-
11 gent, liquidated, secured debts specified in this sub-
12 section.", and
13 (2) by adding at the end of subsection (h) the
14 following:
15 "(5) Notwithstanding the 180-day period speci-
16 fied in paragraph (1), with respect to a debtor in a
17 case under chapter 13 who submits to the court a
18 certification that the debtor has received notice that
19 the holder of a claim secured by the debtor's prin-
20 cipal residence may commence a foreclosure on the
21 debtor's principal residence, the requirements of
22 paragraph (1) shall be considered to be satisfied if
23 the debtor satisfies such requirements not later than
24 the expiration of the 30-day period beginning on the
25 date of the filing of the petition.".

1 **SEC. 9003. PROHIBITING CLAIMS ARISING FROM VIOLA-**
2 **TIONS OF THE TRUTH IN LENDING ACT.**

3 Section 502(b) of title 11, United States Code, is
4 amended—

5 (1) in paragraph (8) by striking "or" at the
6 end,

7 (2) in paragraph (9) by striking the period at
8 the end and inserting "; or", and

9 (3) by adding at the end the following:

10 "(10) the claim for a loan secured by a security
11 interest in the debtor's principal residence is subject
12 to a remedy for rescission under the Truth in Lend-
13 ing Act notwithstanding the prior entry of a fore-
14 closure judgment, except that nothing in this para-
15 graph shall be construed to modify, impair, or super-
16 sede any other right of the debtor.".

17 **SEC. 9004. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

18 Section 1322 of title 11, United States Code, is
19 amended—

20 (1) in subsection (b)—

21 (A) by redesignating paragraph (11) as
22 paragraph (12),

23 (B) in paragraph (10) by striking "and" at
24 the end, and

25 (C) by inserting after paragraph (10) the
26 following:

1 "(11) notwithstanding paragraph (2), with re-
2 spect to a claim for a loan originated before the ef-
3 fective date of this paragraph and secured by a secu-
4 rity interest in the debtor's principal residence that
5 is the subject of a notice that a foreclosure may be
6 commenced with respect to such loan, modify the
7 rights of the holder of such claim (and the rights of
8 the holder of any claim secured by a subordinate se-
9 curity interest in such residence)—
10 "(A) by providing for payment of the
11 amount of the allowed secured claim as deter-
12 mined under section 506(a)(1);
13 "(B) if any applicable rate of interest is
14 adjustable under the terms of such loan by pro-
15 hibiting, reducing, or delaying adjustments to
16 such rate of interest applicable on and after the
17 date of filing of the plan;
18 "(C) by modifying the terms and condi-
19 tions of such loan—
20 "(i) to extend the repayment period
21 for a period that is no longer than the
22 longer of 40 years (reduced by the period
23 for which such loan has been outstanding)
24 or the remaining term of such loan, begin-

1 ning on the date of the order for relief
2 under this chapter; and
3 "(ii) to provide for the payment of in-
4 terest accruing after the date of the order
5 for relief under this chapter at a fixed an-
6 nual rate equal to the currently applicable
7 average prime offer rate as of the date of
8 the order for relief under this chapter, cor-
9 responding to the repayment term deter-
10 mined under the preceding paragraph, as
11 published by the Federal Financial Institu-
12 tions Examination Council in its table enti-
13 tled 'Average Prime Offer Rates—Fixed',
14 plus a reasonable premium for risk; and
15 "(D) by providing for payments of such
16 modified loan directly to the holder of the claim
17 or, at the discretion of the court, through the
18 trustee during the term of the plan; and", and
19 (2) by adding at the end the following:
20 "(g) A claim may be reduced under subsection
21 (b)(11)(A) only on the condition that if the debtor sells
22 the principal residence securing such claim, before com-
23 pleting all payments under the plan (or, if applicable, be-
24 fore receiving a discharge under section 1328(b)) and re-
25 ceives net proceeds from the sale of such residence, then

1 the debtor agrees to pay to such holder not later than 15
2 days after receiving such proceeds—
3 "(1) if such residence is sold in the 1st year oc-
4 curring after the effective date of the plan, 90 per-
5 cent of the amount of the difference between the
6 sales price and the amount of such claim as origi-
7 nally determined under subsection (b)(11) (plus
8 costs of sale and improvements), but not to exceed
9 the unpaid amount of the allowed secured claim de-
10 termined as if such claim had not been reduced
11 under such subsection;
12 "(2) if such residence is sold in the 2d year oc-
13 curring after the effective date of the plan, 70 per-
14 cent of the amount of the difference between the
15 sales price and the amount of such claim as origi-
16 nally determined under subsection (b)(11) (plus
17 costs of sale and improvements), but not to exceed
18 the unpaid amount of the allowed secured claim de-
19 termined as if such claim had not been reduced
20 under such subsection;
21 "(3) if such residence is sold in the 3d year oc-
22 curring after the effective date of the plan, 50 per-
23 cent of the amount of the difference between the
24 sales price and the amount of such claim as origi-
25 nally determined under subsection (b)(11) (plus

1 costs of sale and improvements), but not to exceed
2 the unpaid amount of the allowed secured claim de-
3 termined as if such claim had not been reduced
4 under such subsection;
5 "(4) if such residence is sold in the 4th year oc-
6 curring after the effective date of the plan, 30 per-
7 cent of the amount of the difference between the
8 sales price and the amount of such claim as origi-
9 nally determined under subsection (b)(11) (plus
10 costs of sale and improvements), but not to exceed
11 the unpaid amount of the allowed secured claim de-
12 termined as if such claim had not been reduced
13 under such subsection; and
14 "(5) if such residence is sold in the 5th year oc-
15 curring after the effective date of the plan, 10 per-
16 cent of the amount of the difference between the
17 sales price and the amount of such claim as origi-
18 nally determined under subsection (b)(11) (plus
19 costs of sale and improvements), but not to exceed
20 the unpaid amount of the allowed secured claim de-
21 termined as if such claim had not been reduced
22 under such subsection.
23 "(h) With respect to a claim of the kind described
24 in subsection (b)(11), the plan may not contain a modi-
25 fication under the authority of subsection (b)(11)—

1 "(1) in a case commenced under this chapter
2 after the expiration of the 30-day period beginning
3 on the effective date of this subsection, unless—
4 "(A) the debtor certifies that the debtor—
5 "(i) not less than 30 days before the
6 commencement of the case, contacted the
7 holder of such claim (or the entity col-
8 lecting payments on behalf of such holder)
9 regarding modification of the loan that is
10 the subject of such claim;
11 "(ii) provided the holder of the claim
12 (or the entity collecting payments on be-
13 half of such holder) a written statement of
14 the debtor's current income, expenses, and
15 debt substantially conforming with the
16 schedules required under section 521(a) or
17 such other form as is promulgated by the
18 Judicial Conference of the United States
19 for such purpose; and
20 "(iii) considered any qualified loan
21 modification offered to the debtor by the
22 holder of the claim (or the entity collecting
23 payments on behalf of such holder); or

1 "(B) a foreclosure sale is scheduled to
2 occur on a date in the 30-day period beginning
3 on the date the case is commenced;
4 "(2) in any other case pending under this chap-
5 ter, unless the debtor certifies that the debtor at-
6 tempted to contact the holder of such claim (or the
7 entity collecting payments on behalf of such holder)
8 regarding modification of the loan that is the subject
9 of such claim, before—
10 "(A) filing a plan under section 1321 that
11 contains a modification under the authority of
12 subsection (b)(11); or
13 "(B) modifying a plan under section 1323
14 or 1329 to contain a modification under the au-
15 thority of subsection (b)(11).
16 "(i) In determining the holder's allowed secured claim
17 under section 506(a)(1) for purposes of subsection
18 (b)(11)(A), the value of the debtor's principal residence
19 shall be the fair market value of such residence on the
20 date such value is determined and, if the issue of value
21 is contested, the court shall determine such value in ac-
22 cordance with the appraisal rules used by the Federal
23 Housing Administration.".

1 **SEC. 9005. COMBATING EXCESSIVE FEES.**

2 Section 1322(c) of title 11, United States Code, is
3 amended—

4 (1) in paragraph (1) by striking "and" at the
5 end,

6 (2) in paragraph (2) by striking the period at
7 the end and inserting a semicolon, and

8 (3) by adding at the end the following:

9 "(3) the debtor, the debtor's property, and
10 property of the estate are not liable for a fee, cost,
11 or charge that is incurred while the case is pending
12 and arises from a debt that is secured by the debt-
13 or's principal residence except to the extent that—

14 "(A) the holder of the claim for such debt
15 files with the court and serves on the trustee,
16 the debtor, and the debtor's attorney (annually
17 or, in order to permit filing consistent with
18 clause (ii), at such more frequent periodicity as
19 the court determines necessary) notice of such
20 fee, cost, or charge before the earlier of—

21 "(i) 1 year after such fee, cost, or
22 charge is incurred; or

23 "(ii) 60 days before the closing of the
24 case; and

25 "(B) such fee, cost, or charge—

1 "(i) is lawful under applicable non-
2 bankruptcy law, reasonable, and provided
3 for in the applicable security agreement;
4 and
5 "(ii) is secured by property the value
6 of which is greater than the amount of
7 such claim, including such fee, cost, or
8 charge;
9 "(4) the failure of a party to give notice de-
10 scribed in paragraph (3) shall be deemed a waiver
11 of any claim for fees, costs, or charges described in
12 paragraph (3) for all purposes, and any attempt to
13 collect such fees, costs, or charges shall constitute a
14 violation of section 524(a)(2) or, if the violation oc-
15 curs before the date of discharge, of section 362(a);
16 and
17 "(5) a plan may provide for the waiver of any
18 prepayment penalty on a claim secured by the debt-
19 or's principal residence.".
20 **SEC. 9006. CONFIRMATION OF PLAN.**
21 (a) Section 1325(a) of title 11, United States Code,
22 is amended—
23 (1) in the matter preceding paragraph (1)
24 strike "subsection (b)" and insert "subsections (b)
25 and (d)".

1 (2) in paragraph (5)—

2 (A) by inserting "except as otherwise pro-
3 vided in section 1322(b)(11)," after "(5)", and

4 (B) in subparagraph (B)(iii)(I) by insert-
5 ing "(including payments of a claim modified
6 under section 1322(b)(11))" after "payments"
7 the 1st place it appears,

8 (3) in paragraph (8) by striking "and" at the
9 end,

10 (4) in paragraph (9) by striking the period at
11 the end and inserting a semicolon, and

12 (5) by inserting after paragraph (9) the fol-
13 lowing:

14 "(10) notwithstanding subclause (I) of para-
15 graph (5)(B)(i), whenever the plan modifies a claim
16 in accordance with section 1322(b)(11), the holder
17 of a claim whose rights are modified pursuant to
18 section 1322(b)(11) shall retain the lien until the
19 later of—

20 "(A) the payment of such holder's allowed
21 secured claim; or

22 "(B) completion of all payments under the
23 plan (or, if applicable, receipt of a discharge
24 under section 1328(b)); and

1 "(11) whenever the plan modifies a claim in ac-
2 cordance with section 1322(b)(11), the court finds
3 that such modification is in good faith (Lack of good
4 faith exists if the debtor has no need for relief under
5 this paragraph because the debtor can pay all of his
6 or her debts and any future payment increases on
7 such debts without difficulty for the foreseeable fu-
8 ture, including the positive amortization of mortgage
9 debt. In determining whether a reduction of the
10 principal amount of the loan resulting from a modi-
11 fication made under the authority of section
12 1322(b)(11) is made in good faith, the court shall
13 consider whether the holder of such claim (or the en-
14 tity collecting payments on behalf of such holder)
15 has offered to the debtor a qualified loan modifica-
16 tion that would enable the debtor to pay such debts
17 and such loan without reducing such principal
18 amount.) and does not find that the debtor has been
19 convicted of obtaining by actual fraud the extension,
20 renewal, or refinancing of credit that gives rise to a
21 modified claim.".
22 (b) Section 1325 of title 11, United States Code, is
23 amended by adding at the end the following (and make
24 such technical and conforming changes as may be appro-
25 priate):

1 "(d) Notwithstanding section 1322(b)(11)(C)(ii), the
2 court, on request of the debtor or the holder of a claim
3 secured by a senior security interest in the debtor's prin-
4 cipal residence, may confirm a plan proposing a reduction
5 in the interest rate on the loan secured by such security
6 interest and that does not reduce the principal, provided
7 the total monthly mortgage payment is reduced to a per-
8 centage of the debtor's income in accordance with the
9 guidelines of the Obama Administration's Homeowner Af-
10 fordability and Stability Plan as implemented March 4,
11 2009, if, taking into account the debtor's financial situa-
12 tion, after allowance of expenses that would be permitted
13 for a debtor under this chapter subject to paragraph (3)
14 of subsection (b), regardless of whether the debtor is oth-
15 erwise subject to such paragraph, and taking into account
16 additional debts and fees that are to be paid in this chap-
17 ter and thereafter, the debtor would be able to prevent
18 foreclosure and pay a fully amortizing 30-year loan at
19 such reduced interest rate without such reduction in prin-
20 cipal.".

21 **SEC. 9007. DISCHARGE.**

22 Section 1328(a) of title 11, United States Code, is
23 amended—

1 (1) by inserting "(other than payments to hold-
2 ers of claims whose rights are modified under sec-
3 tion 1322(b)(11))" after "paid", and
4 (2) in paragraph (1) by inserting "or, to the ex-
5 tent of the unpaid portion of an allowed secured
6 claim, provided for in section 1322(b)(11)" after
7 "1322(b)(5)".

8 **SEC. 9008. STANDING TRUSTEE FEES.**

9 (a) AMENDMENT TO TITLE 28.—Section
10 586(e)(1)(B)(i) of title 28, United States Code, is amend-
11 ed—
12 (1) by inserting "(I) except as provided in sub-
13 paragraph (II)" after "(i)",
14 (2) by striking "or" at the end and inserting
15 "and", and
16 (3) by adding at the end the following:
17 "(II) 4 percent with respect to pay-
18 ments received under section 1322(b)(11)
19 of title 11 by the individual as a result of
20 the operation of section 1322(b)(11)(D) of
21 title 11, unless the bankruptcy court
22 waives all fees with respect to such pay-
23 ments based on a determination that such
24 individual has income less than 150 per-
25 cent of the official poverty line (as defined

1 by the Office of Management and Budget,
2 and revised annually in accordance with
3 section 673(2) of the Omnibus Budget
4 Reconciliation Act of 1981) applicable to a
5 family of the size involved and payment of
6 such fees would render the debtor's plan
7 infeasible.".

8 (b) CONFORMING PROVISION.—The amendments
9 made by this section shall apply to any trustee to whom
10 the provisions of section 302(d)(3) of the Bankruptcy
11 Judges, United States Trustees, and Family Farmer
12 Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat.
13 3121) apply.

14 **SEC. 9009. EFFECTIVE DATE; APPLICATION OF AMEND-**
15 **MENTS.**

16 (a) EFFECTIVE DATE.—Except as provided in sub-
17 section (b), this subtitle and the amendments made by this
18 subtitle shall take effect on the date of the enactment of
19 this Act.

20 (b) APPLICATION OF AMENDMENTS.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the amendments made by this subtitle
23 shall apply with respect to cases commenced under
24 title 11 of the United States Code before, on, or
25 after the date of the enactment of this Act.

1 (2) LIMITATION.—Paragraph (1) shall not
2 apply with respect to cases closed under title 11 of
3 the United States Code as of the date of the enact-
4 ment of this Act that are neither pending on appeal
5 in, nor appealable to, any court of the United
6 States.

7 **SEC. 9010. GAO STUDY.**

8 The Comptroller General shall carry out a study, and
9 submit to the Committee on the Judiciary of the House
10 of Representatives and the Committee on the Judiciary
11 of the Senate, not later than 2 years after the date of
12 the enactment of this Act a report containing—

13 (1) the results of such study of—

14 (A) the number of debtors who filed, dur-
15 ing the 1-year period beginning on the date of
16 the enactment of this Act, cases under chapter
17 13 of title 11 of the United States Code for the
18 purpose of restructuring their principal resi-
19 dence mortgages,

20 (B) the number of mortgages restructured
21 under the amendments made by this subtitle
22 that subsequently resulted in default and fore-
23 closure,

24 (C) a comparison between the effectiveness
25 of mortgages restructured under non-judicial

1 voluntary mortgage modification programs and
2 mortgages restructured under the amendments
3 made by this subtitle,
4 (D) the number of cases presented to the
5 bankruptcy courts where mortgages were re-
6 structured under the amendments made by this
7 subtitle that were appealed,
8 (E) the number of cases presented to the
9 bankruptcy courts where mortgages were re-
10 structured under the amendments made by this
11 subtitle that were overturned on appeal, and
12 (F) the number of bankruptcy judges dis-
13 ciplined as a result of actions taken to restruc-
14 ture mortgages under the amendments made by
15 this subtitle, and
16 (2) a recommendation as to whether such
17 amendments should be amended to include a sunset
18 clause.
19 **SEC. 9011. REPORT TO CONGRESS.**
20 Not later than 18 months after the date of the enact-
21 ment of this Act, the Comptroller General, in consultation
22 with the Federal Housing Administration, shall submit to
23 the Congress, a report containing—

1 (1) a comprehensive review of the effects of the
2 amendments made by this subtitle on bankruptcy
3 courts,
4 (2) a survey of whether the program should
5 limit the types of homeowners eligible for the pro-
6 gram, and
7 (3) a recommendation on whether such amend-
8 ments should remain in effect.

9 Subtitle B—Related Mortgage
10 Modification Provisions

11 SEC. 9021. ADJUSTMENTS AS A RESULT OF MODIFICATION
12 IN BANKRUPTCY OF HOUSING LOANS GUAR-
13 ANTEED BY THE DEPARTMENT OF VETERANS
14 AFFAIRS.

15 (a) IN GENERAL.—Section 3732 of title 38, United
16 States Code, is amended—
17 (1) in subsection (a)—
18 (A) by redesignating paragraph (2) as sub-
19 paragraph (A) of paragraph (2), and
20 (2) by inserting after subparagraph (A) the fol-
21 lowing new subparagraph:
22 "(B) In the event that a housing loan
23 guaranteed under this chapter is modified
24 under the authority provided under section
25 1322(b) of title 11, United States Code, the

1 Secretary may pay the holder of the obligation
2 the unpaid balance of the obligation due as of
3 the date of the filing of the petition under title
4 11, United States Code, plus accrued interest,
5 but only upon the assignment, transfer, and de-
6 livery to the Secretary (in a form and manner
7 satisfactory to the Secretary) of all rights, in-
8 terest, claims, evidence, and records with re-
9 spect to the housing loan.".

10 (b) MATURITY OF HOUSING LOANS.—Paragraph (1)
11 of section (d) of section 3703 of title 38, United States
12 Code, is amended by inserting "at the time of origination"
13 after "loan".

14 (c) IMPLEMENTATION.—The Secretary of Veterans
15 Affairs may implement the amendments made by this sec-
16 tion through notice, procedure notice, or administrative
17 notice.

18 **SEC. 9022. PAYMENT OF FHA MORTGAGE INSURANCE BENE-**
19 **FITS.**

20 (a) IN GENERAL.—Subsection (a) of section 204 of
21 the National Housing Act (12 U.S.C. 1710(a)) is amend-
22 ed—

23 (1) in paragraph (1), by adding at the end the
24 following new subparagraph:

1 "(E) MODIFICATION OF MORTGAGE IN
2 BANKRUPTCY.—
3 "(i) AUTHORITY.—If an order is en-
4 tered under the authority provided under
5 section 1322(b) of title 11, United States
6 Code, that (a) determines the amount of
7 an allowed secured claim under a mortgage
8 in accordance with section 506(a)(1) of
9 title 11, United States Code, and the
10 amount of such allowed secured claim is
11 less than the amount due under the mort-
12 gage as of the date of the filing of the peti-
13 tion under title 11, United States Code, or
14 (b) reduces the interest to be paid under a
15 mortgage in accordance with section 1325
16 of such title, the Secretary may pay insur-
17 ance benefits for the mortgage as follows:
18 "(I) FULL PAYMENT AND AS-
19 SIGNMENT.—The Secretary may pay
20 the insurance benefits for the mort-
21 gage, but only upon the assignment,
22 transfer, and delivery to the Secretary
23 of all rights, interest, claims, evidence,
24 and records with respect to the mort-
25 gage specified in clauses (i) through

1 (iv) of paragraph (1)(A). The insur-
2 ance benefits shall be paid in the
3 amount equal to the original principal
4 obligation of the mortgage (with such
5 additions and deductions as the Sec-
6 retary determines are appropriate)
7 which was unpaid upon the date of
8 the filing of by the mortgagor of the
9 petition under title 11 of the United
10 States Code. Nothing in this Act may
11 be construed to prevent the Secretary
12 from providing insurance under this
13 title for a mortgage that has pre-
14 viously been assigned to the Secretary
15 under this subclause. The decision of
16 whether to utilize the authority under
17 this subclause for payment and as-
18 signment shall be at the election of
19 the mortgagee, subject to such terms
20 and conditions as the Secretary may
21 establish.
22 "(II) ASSIGNMENT OF UNSE-
23 CURED CLAIM.—The Secretary may
24 make a partial payment of the insur-
25 ance benefits for any unsecured claim

1 under the mortgage, but only upon
2 the assignment to the Secretary of
3 any unsecured claim of the mortgagee
4 against the mortgagor or others aris-
5 ing out of such order. Such assign-
6 ment shall be deemed valid irrespec-
7 tive of whether such claim has been or
8 will be discharged under title 11 of
9 the United States Code. The insur-
10 ance benefits shall be paid in the
11 amount specified in subclause (I) of
12 this clause, as such amount is reduced
13 by the amount of the allowed secured
14 claim. Such allowed secured claim
15 shall continue to be insured under sec-
16 tion 203.
17 "(III) INTEREST PAYMENTS.—
18 The Secretary may make periodic pay-
19 ments, or a one-time payment, of in-
20 surance benefits for interest payments
21 that are reduced pursuant to such
22 order, as determined by the Secretary,
23 but only upon assignment to the Sec-
24 retary of all rights and interest re-
25 lated to such payments.

1 "(ii) DELIVERY OF EVIDENCE OF
2 ENTRY OF ORDER.—Notwithstanding any
3 other provision of this paragraph, no insur-
4 ance benefits may be paid pursuant to this
5 subparagraph for a mortgage before deliv-
6 ery to the Secretary of evidence of the
7 entry of the order issued pursuant to title
8 11, United States Code, in a form satisfac-
9 tory to the Secretary.";
10 (2) in paragraph (5), in the matter preceding
11 subparagraph (A), by inserting after "section 520,
12 and" the following: ", except as provided in para-
13 graph (1)(E),"; and
14 (3) by adding at the end the following new
15 paragraph:
16 "(10) LOAN MODIFICATION PROGRAM.—
17 "(A) AUTHORITY.—The Secretary may
18 carry out a program solely to encourage loan
19 modifications for eligible delinquent mortgages
20 through the payment of insurance benefits and
21 assignment of the mortgage to the Secretary
22 and the subsequent modification of the terms of
23 the mortgage according to a loan modification
24 approved by the mortgagee.

1 "(B) PAYMENT OF BENEFITS AND ASSIGN-
2 MENT.—Under the program under this para-
3 graph, the Secretary may pay insurance bene-
4 fits for a mortgage, in the amount determined
5 in accordance with paragraph (5)(A), without
6 reduction for any amounts modified, but only
7 upon the assignment, transfer, and delivery to
8 the Secretary of all rights, interest, claims, evi-
9 dence, and records with respect to the mortgage
10 specified in clauses (i) through (iv) of para-
11 graph (1)(A).
12 "(C) DISPOSITION.—After modification of
13 a mortgage pursuant to this paragraph, the
14 Secretary may provide insurance under this
15 title for the mortgage. The Secretary may sub-
16 sequently—
17 "(i) re-assign the mortgage to the
18 mortgagee under terms and conditions as
19 are agreed to by the mortgagee and the
20 Secretary;
21 "(ii) act as a Government National
22 Mortgage Association issuer, or contract
23 with an entity for such purpose, in order
24 to pool the mortgage into a Government
25 National Mortgage Association security; or

1 "(iii) re-sell the mortgage in accord-
2 ance with any program that has been es-
3 tablished for purchase by the Federal Gov-
4 ernment of mortgages insured under this
5 title, and the Secretary may coordinate
6 standards for interest rate reductions
7 available for loan modification with inter-
8 est rates established for such purchase.
9 "(D) LOAN SERVICING.—In carrying out
10 the program under this section, the Secretary
11 may require the existing servicer of a mortgage
12 assigned to the Secretary under the program to
13 continue servicing the mortgage as an agent of
14 the Secretary during the period that the Sec-
15 retary acquires and holds the mortgage for the
16 purpose of modifying the terms of the mort-
17 gage. If the mortgage is resold pursuant to sub-
18 paragraph (C)(iii), the Secretary may provide
19 for the existing servicer to continue to service
20 the mortgage or may engage another entity to
21 service the mortgage.".
22 (b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—
23 Paragraph (1) of section 230(b) of the National Housing
24 Act (12 U.S.C. 1715u(b)(1)) is amended by striking "12

1 of the monthly mortgage payments" and inserting "30
2 percent of the unpaid principal balance of the mortgage".
3 (c) IMPLEMENTATION.—The Secretary of Housing
4 and Urban Development may implement the amendments
5 made by this section through notice or mortgagee letter.

6 **SEC. 9023. ADJUSTMENTS AS RESULT OF MODIFICATION OF**
7 **RURAL SINGLE FAMILY HOUSING LOANS IN**
8 **BANKRUPTCY.**

9 (a) GUARANTEED RURAL HOUSING LOANS.—Sub-
10 section (h) of section 502 of the Housing Act of 1949 (42
11 U.S.C. 1472(h)) is amended—
12 (1) in paragraph (7)—
13 (A) in subparagraph (A), by inserting be-
14 fore the period at the end the following: ", un-
15 less the maturity date of the loan is modified in
16 a bankruptcy proceeding or at the discretion of
17 the Secretary"; and
18 (B) in subparagraph (B), by inserting be-
19 fore the semicolon the following: ", unless such
20 rate is modified in a bankruptcy proceeding";
21 (2) by redesignating paragraphs (13) and (14)
22 as paragraphs (14) and (15), respectively; and
23 (3) by inserting after paragraph (12) the fol-
24 lowing new paragraph:

1 "(13) PAYMENT OF GUARANTEE.—In addition
2 to all other authorities to pay a guarantee claim, the
3 Secretary may also pay the guaranteed portion of
4 any losses incurred by the holder of a note or the
5 servicer resulting from a modification of a note by
6 a bankruptcy proceeding.".
7 (b) INSURED RURAL HOUSING LOANS.—Subsection
8 (j) of section 517 of the Housing Act of 1949 (42 U.S.C.
9 1487(j)) is amended—
10 (1) by redesignating paragraphs (2) through
11 (7) as paragraphs (3) through (8), respectively; and
12 (2) by inserting after paragraph (1) the fol-
13 lowing new paragraph:
14 "(2) to pay for losses incurred by holders or
15 servicers in the event of a modification pursuant to
16 a bankruptcy proceeding;".
17 (c) IMPLEMENTATION.—The Secretary of Agriculture
18 may implement the amendments made by this section
19 through notice, procedure notice, or administrative notice.

20. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

S

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. BURGESS OF TEXAS

Page 22, beginning on line 19, strike "orderliness".

21. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

7

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. BURGESS OF TEXAS

Page 92, line 16, insert the following: "The aforementioned amounts shall be indexed to inflation."

22. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

n

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. BURGESS OF TEXAS

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.".

23. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

14

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. BURGESS OF TEXAS

Page 20, line 1, insert after "possible" the following: ", but no later than two (2) years,".

24. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BURGESS, MICHAEL OF TEXAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. BURGESS OF TEXAS

Page 1185, beginning on line 10, strike "**have engaged in information sharing or**".

25. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HERSETH SANDLIN, STEPHANIE OF SOUTH DAKOTA OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

162

AMENDMENT TO H.R. 4173

OFFERED BY MS. Herseth Sandlin

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

1 (a) EXEMPTION.—Section

Page 1024, line 3, strike the period at the end and insert "; and".

Page 1024, after line 3, insert the following:

2 (b) CONSIDERATION OF RISK.—Section 203(c) of the
3 Investment Advisers Act of 1940 (15 U.S.C. 80b—3(c))
4 is amended by adding at the end the following:
5 "(3) The Commission shall take into account
6 the relative risk profile of different classes of private
7 funds as it establishes, by rule or regulation, the
8 registration requirements for private funds.".

26. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GARRETT, SCOTT OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

revised #215

AMENDMENT TO H.R. 4173

OFFERED BY MR. GARRETT OF NEW JERSEY

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

T84
Rep

AMENDMENT TO TITLE VII OF H.R. 4173

OFFERED BY MR. DENT OF PENNSYLVANIA

(Page and line numbers refer to the amendment posted on the Rules Committee website)

At the end of the bill, insert the following new section:

1 **SEC. ___. SENSE OF CONGRESS REGARDING SIMPLIFIED**
2 **MORTGAGE CONTRACT SUMMARIES.**

3 It is the sense of Congress that mortgage lenders
4 should provide loan applicants with a simplified summary
5 of their loan contracts, including an easy-to-read list of
6 the basic loan terms, payment information, the existence
7 of prepayment penalties or balloon payments, and escrow
8 information.

28. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MOORE, DENNIS OF KANSAS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

80

AMENDMENT TO H.R. 4173

OFFERED BY MR. MOORE OF KANSAS AND MR. GARRETT OF NEW JERSEY

Base text: H.R. 4173 with title7_02

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.

1 (b) ALLOCATION OF NONADMITTED PREMIUM
2 TAXES.—
3 (1) IN GENERAL.—The States may enter into a
4 compact or otherwise establish procedures to allocate
5 among the States the premium taxes paid to an in-
6 sured's home State described in subsection (a).
7 (2) EFFECTIVE DATE.—Except as expressly
8 otherwise provided in such compact or other proce-
9 dures, any such compact or other procedures—
10 (A) if adopted on or before the expiration
11 of the 330-day period that begins on the date
12 of the enactment of this Act, shall apply to any
13 premium taxes that, on or after such date of
14 enactment, are required to be paid to any State
15 that is subject to such compact or procedures;
16 and
17 (B) if adopted after the expiration of such
18 330-day period, shall apply to any premium
19 taxes that, on or after January 1 of the first
20 calendar year that begins after the expiration of
21 such 330-day period, are required to be paid to
22 any State that is subject to such compact or
23 procedures.
24 (3) REPORT.—Upon the expiration of the 330-
25 day period referred to in paragraph (2), the NAIC

1 may submit a report to the Committee on Financial
2 Services and Committee on the Judiciary of the
3 House of Representatives and the Committee on
4 Banking, Housing, and Urban Affairs of the Senate
5 identifying and describing any compact or other pro-
6 cedures for allocation among the States of premium
7 taxes that have been adopted during such period by
8 any States.

9 (4) NATIONWIDE SYSTEM.—The Congress in-
10 tends that each State adopt nationwide uniform re-
11 quirements, forms, and procedures, such as an inter-
12 state compact, that provides for the reporting, pay-
13 ment, collection, and allocation of premium taxes for
14 nonadmitted insurance consistent with this section.

15 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
16 PORT.— To facilitate the payment of premium taxes
17 among the States, an insured's home State may require
18 surplus lines brokers and insureds who have independently
19 procured insurance to annually file tax allocation reports
20 with the insured's home State detailing the portion of the
21 nonadmitted insurance policy premium or premiums at-
22 tributable to properties, risks or exposures located in each
23 State. The filing of a nonadmitted insurance tax allocation
24 report and the payment of tax may be made by a person
25 authorized by the insured to act as its agent.

1 **SEC. 10102. REGULATION OF NONADMITTED INSURANCE BY**
2 **INSURED'S HOME STATE.**

3 (a) HOME STATE AUTHORITY.—Except as otherwise
4 provided in this section, the placement of nonadmitted in-
5 surance shall be subject to the statutory and regulatory
6 requirements solely of the insured's home State.

7 (b) BROKER LICENSING.—No State other than an in-
8 sured's home State may require a surplus lines broker to
9 be licensed in order to sell, solicit, or negotiate non-
10 admitted insurance with respect to such insured.

11 (c) ENFORCEMENT PROVISION.—With respect to sec-
12 tion 10101 and subsections (a) and (b) of this section,
13 any law, regulation, provision, or action of any State that
14 applies or purports to apply to nonadmitted insurance sold
15 to, solicited by, or negotiated with an insured whose home
16 State is another State shall be preempted with respect to
17 such application.

18 (d) WORKERS' COMPENSATION EXCEPTION.—This
19 section may not be construed to preempt any State law,
20 rule, or regulation that restricts the placement of workers'
21 compensation insurance or excess insurance for self-fund-
22 ed workers' compensation plans with a nonadmitted in-
23 surer.

1 **SEC. 10103. PARTICIPATION IN NATIONAL PRODUCER**
2 **DATABASE.**

3 After the expiration of the 2-year period beginning
4 on the date of the enactment of this Act, a State may
5 not collect any fees relating to licensing of an individual
6 or entity as a surplus lines broker in the State unless the
7 State has in effect at such time laws or regulations that
8 provide for participation by the State in the national in-
9 surance producer database of the NAIC, or any other
10 equivalent uniform national database, for the licensure of
11 surplus lines brokers and the renewal of such licenses.

12 **SEC. 10104. UNIFORM STANDARDS FOR SURPLUS LINES**
13 **ELIGIBILITY.**

14 A State may not—

15 (1) impose eligibility requirements on, or other-
16 wise establish eligibility criteria for, nonadmitted in-
17 surers domiciled in a United States jurisdiction, ex-
18 cept in conformance with such requirements and cri-
19 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
20 mitted Insurance Model Act, unless the State has
21 adopted nationwide uniform requirements, forms,
22 and procedures developed in accordance with section
23 10101(b) of this title that include alternative nation-
24 wide uniform eligibility requirements; and

25 (2) prohibit a surplus lines broker from placing
26 nonadmitted insurance with, or procuring non-

1 admitted insurance from, a nonadmitted insurer
2 domiciled outside the United States that is listed on
3 the Quarterly Listing of Alien Insurers maintained
4 by the International Insurers Department of the
5 NAIC.

6 **SEC. 10105. STREAMLINED APPLICATION FOR COMMER-**
7 **CIAL PURCHASERS.**

8 A surplus lines broker seeking to procure or place
9 nonadmitted insurance in a State for an exempt commer-
10 cial purchaser shall not be required to satisfy any State
11 requirement to make a due diligence search to determine
12 whether the full amount or type of insurance sought by
13 such exempt commercial purchaser can be obtained from
14 admitted insurers if—

15 (1) the broker procuring or placing the surplus
16 lines insurance has disclosed to the exempt commer-
17 cial purchaser that such insurance may or may not
18 be available from the admitted market that may pro-
19 vide greater protection with more regulatory over-
20 sight; and

21 (2) the exempt commercial purchaser has sub-
22 sequently requested in writing the broker to procure
23 or place such insurance from a nonadmitted insurer.

1 **SEC. 10106. GAO STUDY OF NONADMITTED INSURANCE**
2 **MARKET.**

3 (a) IN GENERAL.—The Comptroller General of the
4 United States shall conduct a study of the nonadmitted
5 insurance market to determine the effect of the enactment
6 of this subtitle on the size and market share of the non-
7 admitted insurance market for providing coverage typi-
8 cally provided by the admitted insurance market.

9 (b) CONTENTS.—The study shall determine and ana-
10 lyze—

11 (1) the change in the size and market share of
12 the nonadmitted insurance market and in the num-
13 ber of insurance companies and insurance holding
14 companies providing such business in the 18-month
15 period that begins upon the effective date of this
16 Act;

17 (2) the extent to which insurance coverage typi-
18 cally provided by the admitted insurance market has
19 shifted to the nonadmitted insurance market;

20 (3) the consequences of any change in the size
21 and market share of the nonadmitted insurance
22 market, including differences in the price and avail-
23 ability of coverage available in both the admitted
24 and nonadmitted insurance markets;

25 (4) the extent to which insurance companies
26 and insurance holding companies that provide both

1 admitted and nonadmitted insurance have experi-
2 enced shifts in the volume of business between ad-
3 mitted and nonadmitted insurance; and
4 (5) the extent to which there has been a change
5 in the number of individuals who have nonadmitted
6 insurance policies, the type of coverage provided
7 under such policies, and whether such coverage is
8 available in the admitted insurance market.
9 (c) CONSULTATION WITH NAIC.—In conducting the
10 study under this section, the Comptroller General shall
11 consult with the NAIC.
12 (d) REPORT.—The Comptroller General shall com-
13 plete the study under this section and submit a report to
14 the Committee on Financial Services of the House of Rep-
15 resentatives and the Committee on Banking, Housing, and
16 Urban Affairs of the Senate regarding the findings of the
17 study not later than 30 months after the effective date
18 of this Act.
19 **SEC. 10107. DEFINITIONS.**
20 For purposes of this subtitle, the following definitions
21 shall apply:
22 (1) ADMITTED INSURER.—The term "admitted
23 insurer" means, with respect to a State, an insurer
24 licensed to engage in the business of insurance in
25 such State.

1 (2) AFFILIATE.—The term "affiliate" means,
2 with respect to an insured, any entity that controls,
3 is controlled by, or is under common control with the
4 insured.
5 (3) AFFILIATED GROUP.—The term "affiliated
6 group" means any group of entities that are all af-
7 filiated.
8 (4) CONTROL.—An entity has "control" over
9 another entity if—
10 (A) the entity directly or indirectly or act-
11 ing through one or more other persons owns,
12 controls or has the power to vote 25 percent or
13 more of any class of voting securities of the
14 other entity; or
15 (B) the entity controls in any manner the
16 election of a majority of the directors or trust-
17 ees of the other entity.
18 (5) EXEMPT COMMERCIAL PURCHASER.—The
19 term "exempt commercial purchaser" means any
20 person purchasing commercial insurance that, at the
21 time of placement, meets the following requirements:
22 (A) The person employs or retains a quali-
23 fied risk manager to negotiate insurance cov-
24 erage.

1 (B) The person has paid aggregate nation-
2 wide commercial property and casualty insur-
3 ance premiums in excess of $100,000 in the im-
4 mediately preceding 12 months.
5 (C)(i) The person meets at least one of the
6 following criteria:
7 (I) The person possesses a net
8 worth in excess of $20,000,000, as
9 such amount is adjusted pursuant to
10 clause (ii).
11 (II) The person generates annual
12 revenues in excess of $50,000,000, as
13 such amount is adjusted pursuant to
14 clause (ii).
15 (III) The person employs more
16 than 500 full time or full time equiva-
17 lent employees per individual insured
18 or is a member of an affiliated group
19 employing more than 1,000 employees
20 in the aggregate.
21 (IV) The person is a not-for-prof-
22 it organization or public entity gener-
23 ating annual budgeted expenditures of
24 at least $30,000,000, as such amount
25 is adjusted pursuant to clause (ii).

1 (V) The person is a municipality
2 with a population in excess of 50,000
3 persons.
4 (ii) Effective on the fifth January 1
5 occurring after the date of the enactment
6 of this Act and each fifth January 1 occur-
7 ring thereafter, the amounts in subclauses
8 (I), (II), and (IV) of clause (i) shall be ad-
9 justed to reflect the percentage change for
10 such five-year period in the Consumer
11 Price Index for All Urban Consumers pub-
12 lished by the Bureau of Labor Statistics of
13 the Department of Labor.
14 (6) HOME STATE.—
15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), the term "home State"
17 means, with respect to an insured—
18 (i) the State in which an insured
19 maintains its principal place of business or,
20 in the case of an individual, the individ-
21 ual's principal residence; or
22 (ii) if 100 percent of the insured risk
23 is located out of the State referred to in
24 subparagraph (A), the State to which the
25 greatest percentage of the insured's tax-

1 able premium for that insurance contract
2 is allocated.
3 (B) AFFILIATED GROUPS.—If more than
4 one insured from an affiliated group are named
5 insureds on a single nonadmitted insurance con-
6 tract, the term "home State" means the home
7 State, as determined pursuant to subparagraph
8 (A), of the member of the affiliated group that
9 has the largest percentage of premium attrib-
10 uted to it under such insurance contract.
11 (7) INDEPENDENTLY PROCURED INSURANCE.—
12 The term "independently procured insurance"
13 means insurance procured directly by an insured
14 from a nonadmitted insurer.
15 (8) NAIC.—The term "NAIC" means the Na-
16 tional Association of Insurance Commissioners or
17 any successor entity.
18 (9) NONADMITTED INSURANCE.—The term
19 "nonadmitted insurance" means any property and
20 casualty insurance permitted to be placed directly or
21 through a surplus lines broker with a nonadmitted
22 insurer eligible to accept such insurance.
23 (10) NON-ADMITTED INSURANCE MODEL
24 ACT.—The term "Non-Admitted Insurance Model
25 Act" means the provisions of the Non-Admitted In-

1 surance Model Act, as adopted by the NAIC on Au-
2 gust 3, 1994, and amended on September 30, 1996,
3 December 6, 1997, October 2, 1999, and June 8,
4 2002.

5 (11) NONADMITTED INSURER.—The term
6 "nonadmitted insurer" means, with respect to a
7 State, an insurer not licensed to engage in the busi-
8 ness of insurance in such State.

9 (12) QUALIFIED RISK MANAGER.—The term
10 "qualified risk manager" means, with respect to a
11 policyholder of commercial insurance, a person who
12 meets all of the following requirements:

13 (A) The person is an employee of, or third
14 party consultant retained by, the commercial
15 policyholder.

16 (B) The person provides skilled services in
17 loss prevention, loss reduction, or risk and in-
18 surance coverage analysis, and purchase of in-
19 surance.

20 (C) The person—

21 (i)(I) has a bachelor's degree or high-
22 er from an accredited college or university
23 in risk management, business administra-
24 tion, finance, economics, or any other field
25 determined by a State insurance commis-

1 sioner or other State regulatory official or
2 entity to demonstrate minimum com-
3 petence in risk management; and
4 (II)(aa) has three years of experi-
5 ence in risk financing, claims adminis-
6 tration, loss prevention, risk and in-
7 surance analysis, or purchasing com-
8 mercial lines of insurance; or
9 (bb) has one of the following
10 designations:
11 (AA) a designation as a
12 Chartered Property and
13 Casualty Underwriter (in
14 this subparagraph referred
15 to as "CPCU") issued by
16 the American Institute for
17 CPCU/Insurance Institute of
18 America;
19 (BB) a designation as
20 an Associate in Risk Man-
21 agement (ARM) issued by
22 the American Institute for
23 CPCU/Insurance Institute of
24 America;

1 (CC) a designation as
2 Certified Risk Manager
3 (CRM) issued by the Na-
4 tional Alliance for Insurance
5 Education & Research;
6 (DD) a designation as
7 a RIMS Fellow (RF) issued
8 by the Global Risk Manage-
9 ment Institute; or
10 (EE) any other des-
11 ignation, certification, or li-
12 cense determined by a State
13 insurance commissioner or
14 other State insurance regu-
15 latory official or entity to
16 demonstrate minimum com-
17 petency in risk management;
18 (ii)(I) has at least seven years of ex-
19 perience in risk financing, claims adminis-
20 tration, loss prevention, risk and insurance
21 coverage analysis, or purchasing commer-
22 cial lines of insurance; and
23 (II) has any one of the designa-
24 tions specified in subitems (AA)
25 through (EE) of clause (i)(II)(bb);

1 (iii) has at least 10 years of experi-
2 ence in risk financing, claims administra-
3 tion, loss prevention, risk and insurance
4 coverage analysis, or purchasing commer-
5 cial lines of insurance; or
6 (iv) has a graduate degree from an
7 accredited college or university in risk
8 management, business administration, fi-
9 nance, economics, or any other field deter-
10 mined by a State insurance commissioner
11 or other State regulatory official or entity
12 to demonstrate minimum competence in
13 risk management.
14 (13) PREMIUM TAX.—The term "premium tax"
15 means, with respect to surplus lines or independently
16 procured insurance coverage, any tax, fee, assess-
17 ment, or other charge imposed by a government en-
18 tity directly or indirectly based on any payment
19 made as consideration for an insurance contract for
20 such insurance, including premium deposits, assess-
21 ments, registration fees, and any other compensation
22 given in consideration for a contract of insurance.
23 (14) SURPLUS LINES BROKER.—The term "sur-
24 plus lines broker" means an individual, firm, or cor-
25 poration which is licensed in a State to sell, solicit,

1 or negotiate insurance on properties, risks, or expo-
2 sures located or to be performed in a State with
3 nonadmitted insurers.

4 (15) STATE.—The term "State" includes any
5 State of the United States, the District of Columbia,
6 the Commonwealth of Puerto Rico, Guam, the
7 Northern Mariana Islands, the Virgin Islands, and
8 American Samoa.

9 Subtitle B—Reinsurance.

10 SEC. 10201. REGULATION OF CREDIT FOR REINSURANCE
11 AND REINSURANCE AGREEMENTS.

12 (a) CREDIT FOR REINSURANCE.—If the State of
13 domicile of a ceding insurer is an NAIC-accredited State,
14 or has financial solvency requirements substantially simi-
15 lar to the requirements necessary for NAIC accreditation,
16 and recognizes credit for reinsurance for the insurer's
17 ceded risk, then no other State may deny such credit for
18 reinsurance.

19 (b) ADDITIONAL PREEMPTION OF
20 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
21 addition to the application of subsection (a), all laws, regu-
22 lations, provisions, or other actions of a State that is not
23 the domiciliary State of the ceding insurer, except those
24 with respect to taxes and assessments on insurance com-

1 panies or insurance income, are preempted to the extent
2 that they—
3 (1) restrict or eliminate the rights of the ceding
4 insurer or the assuming insurer to resolve disputes
5 pursuant to contractual arbitration to the extent
6 such contractual provision is not inconsistent with
7 the provisions of title 9, United States Code;
8 (2) require that a certain State's law shall gov-
9 ern the reinsurance contract, disputes arising from
10 the reinsurance contract, or requirements of the re-
11 insurance contract;
12 (3) attempt to enforce a reinsurance contract
13 on terms different than those set forth in the rein-
14 surance contract, to the extent that the terms are
15 not inconsistent with this subtitle; or
16 (4) otherwise apply the laws of the State to re-
17 insurance agreements of ceding insurers not domi-
18 ciled in that State.
19 **SEC. 10202. REGULATION OF REINSURER SOLVENCY.**
20 (a) DOMICILIARY STATE REGULATION.—If the State
21 of domicile of a reinsurer is an NAIC-accredited State or
22 has financial solvency requirements substantially similar
23 to the requirements necessary for NAIC accreditation,
24 such State shall be solely responsible for regulating the
25 financial solvency of the reinsurer.

1 (b) NONDOMICILIARY STATES.—

2 (1) LIMITATION ON FINANCIAL INFORMATION
3 REQUIREMENTS.—If the State of domicile of a rein-
4 surer is an NAIC-accredited State or has financial
5 solvency requirements substantially similar to the re-
6 quirements necessary for NAIC accreditation, no
7 other State may require the reinsurer to provide any
8 additional financial information other than the infor-
9 mation the reinsurer is required to file with its
10 domiciliary State.

11 (2) RECEIPT OF INFORMATION.—No provision
12 of this section shall be construed as preventing or
13 prohibiting a State that is not the State of domicile
14 of a reinsurer from receiving a copy of any financial
15 statement filed with its domiciliary State.

16 **SEC. 10203. DEFINITIONS.**

17 For purposes of this subtitle, the following definitions
18 shall apply:

19 (1) CEDING INSURER.—The term "ceding in-
20 surer" means an insurer that purchases reinsurance.

21 (2) DOMICILIARY STATE.—The terms "State of
22 domicile" and "domiciliary State" means, with re-
23 spect to an insurer or reinsurer, the State in which
24 the insurer or reinsurer is incorporated or entered
25 through, and licensed.

1 (3) REINSURANCE.—The term "reinsurance"
2 means the assumption by an insurer of all or part
3 of a risk undertaken originally by another insurer.
4 (4) REINSURER.—
5 (A) IN GENERAL.—The term "reinsurer"
6 means an insurer to the extent that the in-
7 surer—
8 (i) is principally engaged in the busi-
9 ness of reinsurance;
10 (ii) does not conduct significant
11 amounts of direct insurance as a percent-
12 age of its net premiums; and
13 (iii) is not engaged in an ongoing
14 basis in the business of soliciting direct in-
15 surance.
16 (B) DETERMINATION.—A determination of
17 whether an insurer is a reinsurer shall be made
18 under the laws of the State of domicile in ac-
19 cordance with this paragraph.
20 (5) STATE.—The term "State" includes any
21 State of the United States, the District of Columbia,
22 the Commonwealth of Puerto Rico, Guam, the
23 Northern Mariana Islands, the Virgin Islands, and
24 American Samoa.

1 **Subtitle C—Rule of Construction.**

2 **SEC. 10301. RULE OF CONSTRUCTION.**

3 Nothing in this title or amendments to this title shall
4 be construed to modify, impair, or supersede the applica-
5 tion of the antitrust laws. Any implied or actual conflict
6 between this title and any amendments to this title and
7 the antitrust laws shall be resolved in favor of the oper-
8 ation of the antitrust laws.

9 **SEC. 10302. SEVERABILITY.**

10 If any section or subsection of this title, or any appli-
11 cation of such provision to any person or circumstance,
12 is held to be unconstitutional, the remainder of this title,
13 and the application of the provision to any other person
14 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

222

AMENDMENT TO H.R. 4173

OFFERED BY MR. WITTMAN OF VIRGINIA

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

1 "(2) announcing, advertising, publicizing, or
2 dealing in any lottery where the money or credit ob-
3 tained in connection with such lottery primarily ben-
4 efits 1 or more charitable organizations exempt from
5 taxation under section 501(c)(3) of the Internal Rev-
6 enue Code of 1986.".
7 (b) FEDERAL RESERVE ACT.—Subsection (d) of sec-
8 tion 9A of the Federal Reserve Act (12 U.S.C. 339(d))
9 is amended to read as follows:
10 "(d) EXCEPTIONS.—No provision of this section shall
11 be construed as prohibiting a State member bank from—
12 "(1) accepting deposits or cashing or otherwise
13 handling checks or other negotiable instruments, or
14 performing other lawful banking services for a State
15 operating a lottery, or for an officer or employee of
16 that State who is charged with the administration of
17 the lottery; or
18 "(2) announcing, advertising, publicizing, or
19 dealing in any lottery where the money or credit ob-
20 tained in connection with such lottery primarily ben-
21 efits 1 or more charitable organizations exempt from
22 taxation under section 501(c)(3) of the Internal Rev-
23 enue Code of 1986.".

1 (c) FEDERAL DEPOSIT INSURANCE ACT.—Sub-
2 section (d) of section 20 of the Federal Deposit Insurance
3 Act (12 U.S.C. 1829a(d)) is amended to read as follows:
4 "(d) EXCEPTIONS.—No provision of this section shall
5 be construed as prohibiting a State nonmember insured
6 bank from—
7 "(1) accepting deposits or cashing or otherwise
8 handling checks or other negotiable instruments, or
9 performing other lawful banking services for a State
10 operating a lottery, or for an officer or employee of
11 that State who is charged with the administration of
12 the lottery; or
13 "(2) announcing, advertising, publicizing, or
14 dealing in any lottery where the money or credit ob-
15 tained in connection with such lottery primarily ben-
16 efits 1 or more charitable organizations exempt from
17 taxation under section 501(c)(3) of the Internal Rev-
18 enue Code of 1986.".
19 (d) HOME OWNERS' LOAN ACT.—Paragraph (4) of
20 section 4(e) of the Home Owners' Loan Act (U.S.C.
21 1463(e)(4)) is amended to read as follows:
22 "(4) EXCEPTIONS.—No provision of this sub-
23 section shall be construed as prohibiting any savings
24 association from—

1 "(A) accepting deposits or cashing or oth-
2 erwise handling checks or other negotiable in-
3 struments, or performing other lawful banking
4 services for a State operating a lottery, or for
5 an officer or employee of that State who is
6 charged with the administration of the lottery;
7 or
8 "(B) announcing, advertising, publicizing,
9 or dealing in any lottery where the money or
10 credit obtained in connection with such lottery
11 primarily benefits 1 or more charitable organi-
12 zations exempt from taxation under section
13 501(c)(3) of the Internal Revenue Code of
14 1986.".

30. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINNICK, WALT OF IDAHO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

33

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MR. MINNICK OF IDAHO

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 DEFINED.—

(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.

31. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BARTLETT, ROSCOE OF MARYLAND OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO H.R. 4173

OFFERED BY MR. BARTLETT OF MARYLAND

Page 825, after line 12, insert the following new section:

1 **SEC. 4313. REQUIREMENTS FOR STATE-LICENSED LOAN**
2 **ORIGINATORS.**

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

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

32. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHAKOWSKY, JANICE OF ILLINOIS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

209

AMENDMENT TO H.R. 4173

OFFERED BY MS. SCHAKOWSKY OF ILLINOIS,

Ms. Titus of Nevada

Page 825, after line 12, insert the following new section:

1 **SEC. 4413. TREATMENT OF REVERSE MORTGAGES.**

2 (a) IN GENERAL.—The Director shall examine the
3 practices of covered persons in connection with any reverse
4 mortgage transaction (as defined in section 103(bb) of the
5 Truth in Lending Act (15 U.S.C. 1602)) and shall pre-
6 scribe regulations identifying any acts or practices as un-
7 lawful, unfair, deceptive, or abusive in connection with a
8 reverse mortgage transaction or the offering of a reverse
9 mortgage.

10 (b) REGULATIONS.—In prescribing regulations under
11 subsection (a), the Director shall ensure that such regula-
12 tions shall—

13 (1) include requirements for—

14 (A) the purpose of preventing unlawful,
15 unfair, deceptive or abusive acts and practices
16 in connection with a reverse mortgage trans-
17 action; and

18 (B) the purpose of providing timely, appro-
19 priate, and effective disclosure to consumers in

1 connection with a reverse mortgage transaction
2 that are consistent with requirements pre-
3 scribed by the Director in connection with other
4 consumer mortgage products or services under
5 this title;
6 (2) with respect to the requirements under
7 paragraph (1), be consistent with requirements pre-
8 scribed by the Director in connection with other con-
9 sumer mortgage products or services under this title;
10 and
11 (3) provide for an integrated disclosure stand-
12 ard and model disclosures for reverse mortgage
13 transactions, consistent with section 4302(d), that
14 combines the relevant disclosures required under the
15 Truth in Lending Act (15 U.S.C. 1601 et seq.) and
16 the Real Estate Settlement Procedures Act, with the
17 disclosures required to be provided to consumers for
18 Home Equity Conversion Mortgages under section
19 255 of the National Housing Act.
20 (c) CONSULTATION.—In connection with the issuance
21 of any regulations under this section, the Director shall
22 consult with the Federal banking agencies, State bank su-
23 pervisors, the Federal Trade Commission, and the Depart-
24 ment of Housing and Urban Development, as appropriate,
25 to ensure that any proposed regulation—

1 (1) imposes substantially similar requirements
2 on all covered persons; and
3 (2) is consistent with prudential, consumer pro-
4 tection, civil rights, market or systemic objectives
5 administered by such agencies or supervisors.
6 (d) DEADLINE FOR RULEMAKING.—The Director
7 shall commence the rulemaking required under subsection
8 (a) not later than 12 months after the date of the enact-
9 ment of this Act.

33. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KILROY , MARY JO OF OHIO OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

KILROY_02

103

AMENDMENT TO H.R. 4173
(FINANCIAL REGULATORY REFORM)

OFFERED BY MS. KILROY OF OHIO

[Page and line nos. refer to text of introduced bill as posted on Rules Committee website]

Page 289, line 10, insert "only" after "Fund".

34. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MURPHY, SCOTT OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

19

AMENDMENT TO H.R. 4173

OFFERED BY MR. MURPHY OF NEW YORK

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".

1 (3) FEDERAL DEPOSIT INSURANCE ACT.—Sec-
2 tion 18(g) of the Federal Deposit Insurance Act (12
3 U.S.C. 1828(g)) is amended to read as follows:
4 "(g) [Repealed]".
5 (b) EFFECTIVE DATE.—The amendments made by
6 subsection (a) shall take effect at the end of the 1-year
7 period beginning on the date of the enactment of this Act.

35. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MINNICK, WALT OF IDAHO OR HIS DESIGNEE, DEBATABLE FOR 20 MINUTES

Revision to Amendment #88

AMENDMENT TO H.R. 4173

OFFERED BY MR. MINNICK OF IDAHO

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;

1 (6) the Secretary of the Department of Housing
2 and Urban Development;
3 (7) the Secretary of the Treasury;
4 (8) the Chairman of the Securities and Ex-
5 change Commission;
6 (9) the Chairman of the Commodities Futures
7 Trading Commission;
8 (10) the Chairman of the Federal Trade Com-
9 mission; and
10 (11) one individual selected by the State Advi-
11 sory Committee established under section 4005.
12 (b) STAFFING.—The Secretary of the Treasury shall
13 provide appropriate staffing for the Council.

14 **SEC. 4003. CONSUMER FINANCIAL PROTECTION SUB-**
15 **COMMITTEE.**

16 (a) ESTABLISHMENT.—There is hereby established
17 within the Council the Consumer Financial Protection
18 Subcommittee (hereinafter in this title referred to as the
19 "CFPS"), which shall consist of the members of the Coun-
20 cil.
21 (b) PURPOSE.—The purpose of the CFPS is to en-
22 sure that all providers of a financial product or service
23 to consumers are subject to meaningful and uniform con-
24 sumer protection requirements, and that functionally

1 equivalent products are subject to equivalent consumer
2 protection standards.
3 (c) CHAIRMANSHIP.—
4 (1) INITIAL CHAIRMAN.—The Chairman of the
5 Federal Trade Commission shall serve as the Chair-
6 man of the CFPS for the 2-year period beginning on
7 the date of the enactment of this title.
8 (2) SUBSEQUENT SELECTION.—After the 2-
9 year period described under paragraph (1), the
10 President shall appoint the Chairman of the CFPS
11 from among the members of the CFPS. The term of
12 the Chairmanship shall be 2 years.
13 (d) VOTING.—Decisions of the CFPS shall be made
14 by a majority vote of the members of the CFPS.
15 (e) DUTIES.—The CFPS shall review existing con-
16 sumer protection regulations and issue new or revised reg-
17 ulations where needed to prevent unfair or deceptive prac-
18 tices.
19 (f) PROCEDURES FOR PROPOSING AND ISSUING REG-
20 ULATIONS.—
21 (1) PROPOSAL.—Any member of the CFPS
22 may propose that the CFPS consider the need for
23 the modification of an existing regulation or for the
24 issuing of a new regulation with respect to a par-
25 ticular consumer financial product or service. After

1 such proposal is made, the CFPS shall develop an
2 analysis of the proposal and prepare a report that
3 either—
4 (A) recommends that no action be taken;
5 or
6 (B) recommends the modification of exist-
7 ing regulations or the issuing of new regula-
8 tions.
9 (2) PUBLICATION.—With respect to a report
10 prepared under paragraph (1)—
11 (A) if the CFPS recommends that no ac-
12 tion be taken, the CFPS shall make a copy of
13 the report publicly available; and
14 (B) if the CFPS recommends the modifica-
15 tion of existing regulations or the issuing of
16 new regulations, the CFPS shall publish such
17 report in the Federal Register and solicit public
18 comments on such recommendation, pursuant
19 to the Administrative Procedure Act.
20 (3) MODIFICATION OR ACCEPTANCE.—With re-
21 spect to each recommendation described under para-
22 graph (2)(B) for the modification of existing regula-
23 tions or the issuing of new regulations, after the
24 CFPS has considered the public comments on such
25 recommendation, the CFPS shall vote on whether

1 such recommendations should be withdrawn, modi-
2 fied, or published as a final regulation.
3 (4) REGULATIONS ISSUED BY CFPS CONTROL.—
4 Notwithstanding any other provision of law, to the
5 extent that any other regulation conflicts with a reg-
6 ulation issued by the CFPS under this subsection,
7 such other regulation shall have no force or effect to
8 the extent of such conflict.
9 (5) PROPOSALS BY STATE ADVISORY COM-
10 MITTEE.—
11 (A) IN GENERAL.—Any proposal made
12 under paragraph (1) by the member of the
13 CFPS selected by the State Advisory Com-
14 mittee shall be accompanied by a certification
15 from such member stating that more than half
16 of the States support such proposal.
17 (B) METHOD OF DETERMINATION.—For
18 purposes of this paragraph, the State Advisory
19 Committee shall determine the method for de-
20 termining if a State supports a proposal.
21 (6) REPORT ON APPROVAL OR OPPOSITION.—
22 Each member of the CFPS shall issue an annual re-
23 port to the Congress containing a detailed expla-
24 nation, for each proposal made under paragraph (1),

1 why such member supported or opposed such pro-
2 posal.
3 (7) PROCEDURES TO BE APPLIED TO ALL
4 RULEMAKINGS.—The procedures under this sub-
5 section shall be used by the CFPS when issuing any
6 regulation under the authority of this title.
7 (g) CONSUMER FINANCIAL PRODUCTS OR SERVICES
8 EXPRESSLY PERMITTED BY STATE OR FEDERAL LAW.—
9 (1) VOTING REQUIREMENTS.—Any votes taken
10 by the CFPS to prevent the offering of any con-
11 sumer financial product or service that is expressly
12 permitted by State or Federal law shall only be
13 agreed to by a two-thirds vote.
14 (2) RECOMMENDATIONS TO THE CONGRESS.—If
15 the CFPS determines a need to prevent the offering
16 of any consumer financial product or service ex-
17 pressly permitted by State or Federal law, the CFPS
18 shall issue a report to the Congress containing such
19 determination and including—
20 (A) a description of the specific financial
21 product or service that the CFPS is recom-
22 mending the Congress should prevent from
23 being offered;

1 (B) an estimate of the amount of credit
2 provided by and the number of consumers using
3 any such financial product or service;
4 (C) a list of any States which have ex-
5 pressly permitted any such financial product or
6 service;
7 (D) the identities of persons known by the
8 CFPS to be offering any such financial product
9 or service;
10 (E) an analysis of whether there are ample
11 other alternative reasonably priced financial
12 products or services available to meet con-
13 sumers' credit needs, and a description of such
14 alternative financial products or services; and
15 (F) the basis and reasoning on which the
16 CFPS has based its recommendation.
17 (3) DEFINITION.—For purposes of this sub-
18 section, the term "prevent the offering of any con-
19 sumer financial product or service" shall mean tak-
20 ing any action that could reasonably result in the di-
21 rect or indirect prohibition of, or materially interfere
22 with the ability of any person to offer, any consumer
23 financial product or service.

1 **SEC. 4004. FINANCIAL INSTITUTIONS EXAMINATION COUN-**
2 **CIL.**

3 Section 1004(a) of the Federal Financial Institutions
4 Examination Council Act of 1978 (12 U.S.C. 3303(a)) is
5 amended by inserting after "established" the following:
6 "as a subcommittee within the Consumer Financial Pro-
7 tection Council".

8 **SEC. 4005. STATE ADVISORY COMMITTEE.**

9 There is hereby established within the Council the
10 State Advisory Committee, which shall consist of one rep-
11 resentative from each of the following:
12 (1) The Conference of State Bank Supervisors.
13 (2) The American Council of State Savings Su-
14 pervisors.
15 (3) The National Association of State Credit
16 Union Supervisors.

17 **SEC. 4006. EQUALITY OF CONSUMER PROTECTION EN-**
18 **FORCEMENT RESPONSIBILITIES.**

19 With respect to each consumer protection agency, the
20 enforcement of the provisions of the consumer protection
21 laws under such agency's jurisdiction shall be of equal im-
22 portance to such agency as the enforcement of the provi-
23 sions of other laws under such agency's jurisdiction.

1 **SEC. 4007. DIRECTOR OF THE CONSUMER FINANCIAL PRO-**
2 **TECTION DIVISION.**

3 (a) ESTABLISHMENT.—There is hereby established
4 within each consumer protection agency a position of Di-
5 rector of the Consumer Financial Protection Division.

6 (b) COMPENSATION.—With respect to a consumer
7 protection agency, the Director of the Consumer Financial
8 Protection Division shall be compensated in an amount no
9 less than the amount of compensation provided to the head
10 of other subdivisions of such agency of a comparable size.

11 (c) DIRECT REPORTING.—Each Director of the Con-
12 sumer Financial Protection Division established under
13 subsection (a) shall report directly to the head of the agen-
14 cy within which such Director is located.

15 (d) ANNUAL REPORT TO THE CONGRESS.—Each
16 consumer protection agency shall issue an annual report
17 to the Congress detailing the activities of the Director of
18 the Consumer Financial Protection Division and how such
19 activities advanced the agency's consumer protection func-
20 tions.

21 **SEC. 4008. PROHIBITING UNFAIR OR DECEPTIVE ACTS OR**
22 **PRACTICES.**

23 (a) IN GENERAL.—Each consumer protection agency
24 may prevent a person from committing or engaging in an
25 unfair or deceptive act or practice in connection with any

1 transaction with a consumer for a consumer financial
2 product or service under such agency's jurisdiction.
3 (b) RULEMAKING.—Each consumer protection agen-
4 cy may prescribe regulations identifying as unlawful, un-
5 fair, or deceptive acts or practices in connection with any
6 transaction with a consumer for a consumer financial
7 product or service under such agency's jurisdiction.
8 (c) REFERRAL TO CFPS.—With respect to each reg-
9 ulation issued pursuant to subsection (b), the consumer
10 protection agency issuing such regulation shall propose
11 such regulation to the CFPS under section 4003(f), unless
12 the CFPS already has a substantially similar proposal
13 under consideration.
14 (d) UNFAIRNESS.—
15 (1) IN GENERAL.—A consumer protection agen-
16 cy shall have no authority under this section to de-
17 clare an act or practice in connection with a trans-
18 action with a consumer for a consumer financial
19 product or service to be unlawful on the grounds
20 that such act or practice is unfair unless such agen-
21 cy has a reasonable basis to conclude that the act
22 or practice causes or is likely to cause substantial in-
23 jury to consumers which is not reasonably avoidable
24 by consumers and such substantial injury is not out-

1 weighed by countervailing benefits to consumers or
2 to competition.
3 (2) EXISTING PUBLISHED GUIDELINES AS FAC-
4 TOR.—In determining whether an act or practice is
5 unfair, a consumer protection agency shall consider
6 established public policies and regulations, interpre-
7 tations, guidance, and staff commentaries issued by
8 the consumer protection agencies under the con-
9 sumer protection laws they enforce.
10 (e) DEFINITIONS.—For purposes of this section, the
11 terms "unfair" and "deceptive" shall have the meanings
12 given such terms under the Federal Trade Commission
13 Act (15 U.S.C. 41 et seq.).

14 **SEC. 4009. ADOPTING OPERATIONAL STANDARDS TO**
15 **DETER UNFAIR OR DECEPTIVE PRACTICES.**

16 (a) AUTHORITY TO PRESCRIBE STANDARDS.—The
17 consumer protection agencies shall prescribe standards ap-
18 plicable to covered persons to deter and detect unfair or
19 deceptive acts or practices in the provision of consumer
20 financial products or services under such agency's jurisdic-
21 tion, including standards for—
22 (1) background checks for principals, officers,
23 directors, or key personnel of the covered person;
24 (2) registration, licensing, or certification;

1 (3) bond or other appropriate financial require-
2 ments to provide reasonable assurance of the ability
3 of the covered person to perform its obligations to
4 consumers;
5 (4) creating and maintaining records of trans-
6 actions or accounts; and
7 (5) procedures and operations of the covered
8 person relating to the provision of, or maintenance
9 of accounts for, consumer financial products or serv-
10 ices.
11 (b) CFPS AUTHORITY TO ISSUE REGULATIONS.—
12 The CFPS may issue regulations establishing minimum
13 standards under this section for any class of covered per-
14 sons.
15 (c) EXCEPTION FOR ENFORCEMENT OF GRAMM-
16 LEACH-BLILEY PRIVACY LAWS AGAINST INSURERS.—
17 Neither the consumer protection agencies nor the CFPS
18 shall have authority to issue or enforce regulations with
19 respect to authorities that are granted to State insurance
20 regulators under section 505(a)(6) of the Gramm-Leach-
21 Bliley Act.
22 **SEC. 4010. PRESUMPTION OF ABILITY TO REPAY.**
23 (a) PROHIBITION ON RESIDENTIAL MORTGAGE
24 LOANS THAT WON'T REASONABLY BE REPAID.—

1 (1) IN GENERAL.—No creditor shall make a
2 residential mortgage loan unless it has a reasonable
3 basis for determining that the consumer can repay
4 the loan.
5 (2) BASIS FOR DETERMINATION.—A determina-
6 tion under this subsection of a consumer's ability to
7 repay a residential mortgage loan shall include con-
8 sideration of the consumer's credit history, current
9 income, expected income the consumer is reasonably
10 assured of receiving, current obligations, debt-to-in-
11 come ratio, employment status, and other financial
12 resources other than the consumer's equity in the
13 dwelling or real property that secures repayment of
14 the loan.
15 (b) EXEMPTION FOR CERTAIN MODEL TERMS AND
16 CONDITIONS.—Subsection (a) shall not apply to residen-
17 tial mortgage loans containing the model terms and condi-
18 tions contained in regulations issued by the Council under
19 subsection (c).
20 (c) PROCEDURE FOR ADOPTING MODEL TERMS AND
21 CONDITIONS.—
22 (1) IN GENERAL.—Not later than 1 years after
23 the date of the enactment of this title, the Council
24 shall issue regulations containing model terms and

1 conditions for residential mortgage loans, for pur-
2 poses of subsection (b).
3 (2) VOTING.—The Council may only issue a
4 regulation under paragraph (1)—
5 (A) by a majority vote of the Council's
6 members; and
7 (B) in a vote where each member of the
8 Council casts a vote.
9 (3) REVISION OF MODEL TERMS AND CONDI-
10 TIONS.—The Council shall update regulations issued
11 under this subsection from time to time as appro-
12 priate.
13 (4) RULEMAKING PROCEDURES.—In issuing
14 any regulation under this subsection, the Council
15 shall, to the extent practicable, follow the procedures
16 set forth under section 4003(f) for the consideration
17 of proposals by the CFPS.
18 (d) ENFORCEMENT.—The prohibition under sub-
19 section (a) shall be enforced by each member of the Coun-
20 cil with jurisdiction over the provision of residential mort-
21 gage loans.

1 **SEC. 4011. EXAMINATIONS BY CONSUMER PROTECTION**
2 **AGENCIES.**

3 (a) IN GENERAL.—Each consumer protection agency
4 shall carry out regular examinations of covered persons
5 regulated by such agency.

6 (b) SCOPE OF EXAMINATIONS.—Examinations car-
7 ried out pursuant to subsection (a) shall be comparable
8 to those examinations carried out by the Federal banking
9 agencies of insured depository institutions.

10 **SEC. 4012. CONSUMER RIGHTS TO ACCESS INFORMATION.**

11 (a) IN GENERAL.—Subject to regulations prescribed
12 by the consumer protection agencies, a covered person
13 shall make available to a consumer, in an electronic form
14 usable by the consumer, information in the control or pos-
15 session of the covered person concerning the consumer fi-
16 nancial product or service that the consumer obtained
17 from such covered person including information relating
18 to any transaction, series of transactions, or to the ac-
19 count, including charges and usage data.

20 (b) EXCEPTIONS.—A covered person shall not be re-
21 quired by this section to make available to the consumer—

22 (1) any confidential commercial information, in-
23 cluding an algorithm used to derive credit scores or
24 other risk scores or predictors;

25 (2) any information collected by the covered
26 person for the purpose of preventing fraud or money

1 laundering, or detecting, or making any report re-
2 garding other unlawful or potentially unlawful con-
3 duct;
4 (3) any information required to be kept con-
5 fidential by any other law; or
6 (4) any information that the covered person
7 cannot retrieve in the ordinary course of its business
8 with respect to that information.
9 (c) NO DUTY TO MAINTAIN RECORDS.—No provision
10 of this section shall be construed as imposing any duty
11 on a covered person to maintain or keep any information
12 about a consumer.
13 (d) STANDARDIZED FORMATS FOR DATA.—The con-
14 sumer protection agencies, by regulation, shall prescribe
15 standards applicable to covered persons to promote the de-
16 velopment and use of standardized formats for informa-
17 tion, including through the use of machine readable files,
18 to be made available to consumers under this section.
19 **SEC. 4013. PROHIBITED ACTS.**
20 It shall be unlawful for any person to—
21 (1) advertise, market, offer, sell, enforce, or at-
22 tempt to enforce, any term, agreement, change in
23 terms, fee or charge in connection with a consumer
24 financial product or service that is not in conformity
25 with this title and applicable regulation prescribed or

1 order issued by the consumer protection agencies,
2 the CFPS, or the Council;
3 (2) fail or refuse to permit access to or copying
4 of records, or fail or refuse to establish or maintain
5 records, or fail or refuse to make reports or provide
6 information to a consumer protection agency, the
7 CFPS, or the Council, as required by this title, a
8 consumer protection law or any regulation pre-
9 scribed or order issued by a consumer protection
10 agency, the CFPS, or the Council under this title or
11 pursuant to any such authority; or
12 (3) knowingly or recklessly provide substantial
13 assistance to another person in violation of the pro-
14 visions of section 4008, or any regulation prescribed
15 or order issued under such section, and any such
16 person shall be deemed to be in violation of that sec-
17 tion to the same extent as the person to whom such
18 assistance is provided.

19 **SEC. 4014. STATE ATTORNEYS GENERAL RIGHT TO SUE.**

20 No provision of this title shall be construed to limit
21 the applicability or the effect of the decision of the Su-
22 preme Court in Cuomo v. Clearing House Assn., L.L.C.,
23 557 U.S. _____ (2009).

1 **SEC. 4015. ENFORCEMENT.**

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

4 (1) CIVIL INVESTIGATIVE DEMAND AND DE-
5 MAND.—The terms "civil investigative demand" and
6 "demand" mean any demand issued by a consumer
7 protection agency.

8 (2) CONSUMER PROTECTION AGENCY.—The
9 term "consumer protection agency" means—

10 (A) the appropriate Federal banking agen-
11 cy (as such term is defined in section 3(q) of
12 the Federal Deposit Insurance Act), with re-
13 spect to entities regulated by the appropriate
14 Federal banking agencies;

15 (B) the National Credit Union Administra-
16 tion, with respect to a credit union;

17 (C) the Securities and Exchange Commis-
18 sion, with respect to an entity regulated by such
19 Commission;

20 (D) the Commodity Futures Trading Com-
21 mission, with respect to an entity regulated by
22 such Commission; and

23 (E) the Federal Trade Commission, with
24 respect to any entity not regulated by the ap-
25 propriate Federal banking agencies, the Na-
26 tional Credit Union Administration, the Securi-

1 ties and Exchange Commission, or the Com-
2 modity Futures Trading Commission.
3 (3) CONSUMER PROTECTION AGENCY INVES-
4 TIGATION.—The term "consumer protection agency
5 investigation" means any inquiry conducted by a
6 consumer protection agency investigator for the pur-
7 pose of ascertaining whether any person is or has
8 been engaged in any conduct that violates this title,
9 any consumer protection law, or any regulation pre-
10 scribed or order issued by the consumer protection
11 agencies, the CFPS, or the Council under this title.
12 (4) CONSUMER PROTECTION AGENCY INVESTI-
13 GATOR.—The term "consumer protection agency in-
14 vestigator" means any attorney or investigator em-
15 ployed by a consumer protection agency who is
16 charged with the duty of enforcing or carrying into
17 effect any provisions of this title, any consumer pro-
18 tection law, or any regulation prescribed or order
19 issued under this title or pursuant to any such au-
20 thority by the consumer protection agency, the
21 CFPS, or the Council.
22 (5) CUSTODIAN.—The term "custodian" means
23 the custodian or any deputy custodian designated by
24 a consumer protection agency.

1 (6) DOCUMENTARY MATERIAL.—The term
2 "documentary material" includes the original or any
3 copy of any book, record, report, memorandum,
4 paper, communication, tabulation, chart, or other
5 document.
6 (7) VIOLATION.—The term "violation" means
7 any act or omission that, if proved, would constitute
8 a violation of any provision of this title, any con-
9 sumer protection law, or of any regulation prescribed
10 or order issued by a consumer protection agency, the
11 CFPS, of the Council under this title or pursuant to
12 any such authority.
13 (b) INVESTIGATIONS AND ADMINISTRATIVE DIS-
14 COVERY.—
15 (1) SUBPOENAS.—
16 (A) IN GENERAL.—A consumer protection
17 agency or a consumer protection agency investi-
18 gator may issue subpoenas for the attendance
19 and testimony of witnesses and the production
20 of relevant papers, books, documents, or other
21 material in connection with hearings under this
22 title.
23 (B) FAILURE TO OBEY.—In case of contu-
24 macy or refusal to obey a subpoena issued pur-
25 suant to this paragraph and served upon any

1 person, the district court of the United States
2 for any district in which such person is found,
3 resides, or transacts business, upon application
4 by a consumer protection agency or a consumer
5 protection agency investigator and after notice
6 to such person, shall have jurisdiction to issue
7 an order requiring such person to appear and
8 give testimony or to appear and produce docu-
9 ments or other material, or both.
10 (C) CONTEMPT.—Any failure to obey an
11 order of the court under this subsection may be
12 punished by the court as a contempt thereof.
13 (2) DEMANDS.—
14 (A) IN GENERAL.—Whenever a consumer
15 protection agency has reason to believe that any
16 person may be in possession, custody, or control
17 of any documentary material or tangible things,
18 or may have any information, relevant to a vio-
19 lation, a consumer protection agency may, be-
20 fore the institution of any proceedings under
21 this title or under any consumer protection law,
22 issue in writing, and cause to be served upon
23 such person, a civil investigative demand requir-
24 ing such person to—

1 (i) produce such documentary mate-
2 rial for inspection and copying or repro-
3 duction;
4 (ii) submit such tangible things;
5 (iii) file written reports or answers to
6 questions;
7 (iv) give oral testimony concerning
8 documentary material or other informa-
9 tion; or
10 (v) furnish any combination of such
11 material, answers, or testimony.
12 (B) REQUIREMENTS.—Each civil investiga-
13 tive demand shall state the nature of the con-
14 duct constituting the alleged violation which is
15 under investigation and the provision of law ap-
16 plicable to such violation.
17 (C) PRODUCTION OF DOCUMENTS.—Each
18 civil investigative demand for the production of
19 documentary material shall—
20 (i) describe each class of documentary
21 material to be produced under the demand
22 with such definiteness and certainty as to
23 permit such material to be fairly identified;
24 (ii) prescribe a return date or dates
25 which will provide a reasonable period of

1 time within which the material so de-
2 manded may be assembled and made avail-
3 able for inspection and copying or repro-
4 duction; and
5 (iii) identify the custodian to whom
6 such material shall be made available.
7 (D) PRODUCTION OF THINGS.—Each civil
8 investigative demand for the submission of tan-
9 gible things shall—
10 (i) describe each class of tangible
11 things to be submitted under the demand
12 with such definiteness and certainty as to
13 permit such things to be fairly identified;
14 (ii) prescribe a return date or dates
15 which will provide a reasonable period of
16 time within which the things so demanded
17 may be assembled and submitted; and
18 (iii) identify the custodian to whom
19 such things shall be submitted.
20 (E) DEMAND FOR WRITTEN REPORTS OR
21 ANSWERS.—Each civil investigative demand for
22 written reports or answers to questions shall—
23 (i) propound with definiteness and
24 certainty the reports to be produced or the
25 questions to be answered;

1 (ii) prescribe a date or dates at which
2 time written reports or answers to ques-
3 tions shall be submitted; and
4 (iii) identify the custodian to whom
5 such reports or answers shall be submitted.
6 (F) ORAL TESTIMONY.—Each civil inves-
7 tigative demand for the giving of oral testimony
8 shall—
9 (i) prescribe a date, time, and place at
10 which oral testimony shall be commenced;
11 and
12 (ii) identify a consumer protection
13 agency investigator who shall conduct the
14 investigation and the custodian to whom
15 the transcript of such investigation shall be
16 submitted.
17 (G) SERVICE.—
18 (i) Any civil investigative demand may
19 be served by any consumer protection
20 agency investigator at any place within the
21 territorial jurisdiction of any court of the
22 United States.
23 (ii) Any such demand or any enforce-
24 ment petition filed under this section may
25 be served upon any person who is not

1 found within the territorial jurisdiction of
2 any court of the United States, in such
3 manner as the Federal Rules of Civil Pro-
4 cedure prescribe for service in a foreign
5 nation.
6 (iii) To the extent that the courts of
7 the United States have authority to assert
8 jurisdiction over such person consistent
9 with due process, the United States Dis-
10 trict Court for the District of Columbia
11 shall have the same jurisdiction to take
12 any action respecting compliance with this
13 section by such person that such district
14 court would have if such person were per-
15 sonally within the jurisdiction of such dis-
16 trict court.
17 (H) METHOD OF SERVICE.—Service of any
18 civil investigative demand or any enforcement
19 petition filed under this section may be made
20 upon a person, including any legal entity, by—
21 (i) delivering a duly executed copy of
22 such demand or petition to the individual
23 or to any partner, executive officer, man-
24 aging agent, or general agent of such per-
25 son, or to any agent of such person author-

1 ized by appointment or by law to receive
2 service of process on behalf of such person;
3 (ii) delivering a duly executed copy of
4 such demand or petition to the principal
5 office or place of business of the person to
6 be served; or
7 (iii) depositing a duly executed copy in
8 the United States mails, by registered or
9 certified mail, return receipt requested,
10 duly addressed to such person at its prin-
11 cipal office or place of business.
12 (I) PROOF OF SERVICE.—
13 (i) A verified return by the individual
14 serving any civil investigative demand or
15 any enforcement petition filed under this
16 section setting forth the manner of such
17 service shall be proof of such service.
18 (ii) In the case of service by registered
19 or certified mail, such return shall be ac-
20 companied by the return post office receipt
21 of delivery of such demand or enforcement
22 petition.
23 (J) PRODUCTION OF DOCUMENTARY MATE-
24 RIAL.—The production of documentary material
25 in response to a civil investigative demand shall

1 be made under a sworn certificate, in such form
2 as the demand designates, by the person, if a
3 natural person, to whom the demand is directed
4 or, if not a natural person, by any person hav-
5 ing knowledge of the facts and circumstances
6 relating to such production, to the effect that
7 all of the documentary material required by the
8 demand and in the possession, custody, or con-
9 trol of the person to whom the demand is di-
10 rected has been produced and made available to
11 the custodian.

12 (K) SUBMISSION OF TANGIBLE THINGS.—
13 The submission of tangible things in response
14 to a civil investigative demand shall be made
15 under a sworn certificate, in such form as the
16 demand designates, by the person to whom the
17 demand is directed or, if not a natural person,
18 by any person having knowledge of the facts
19 and circumstances relating to such production,
20 to the effect that all of the tangible things re-
21 quired by the demand and in the possession,
22 custody, or control of the person to whom the
23 demand is directed have been submitted to the
24 custodian.

1 (L) SEPARATE ANSWERS.—Each reporting
2 requirement or question in a civil investigative
3 demand shall be answered separately and fully
4 in writing under oath, unless it is objected to,
5 in which event the reasons for the objection
6 shall be stated in lieu of an answer, and it shall
7 be submitted under a sworn certificate, in such
8 form as the demand designates, by the person,
9 if a natural person, to whom the demand is di-
10 rected or, if not a natural person, by any per-
11 son responsible for answering each reporting re-
12 quirement or question, to the effect that all in-
13 formation required by the demand and in the
14 possession, custody, control, or knowledge of
15 the person to whom the demand is directed has
16 been submitted.
17 (M) TESTIMONY.—
18 (i) PROCEDURE.—
19 (I) OATH AND RECORDATION.—
20 Any consumer protection agency in-
21 vestigator before whom oral testimony
22 is to be taken shall put the witness on
23 oath or affirmation and shall person-
24 ally, 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

1 which such person resides, is found, or
2 transacts business, or in such other place
3 as may be agreed upon by the consumer
4 protection agency investigator before whom
5 the oral testimony of such person is to be
6 taken and such person.
7 (iv) ATTORNEY REPRESENTATION.—
8 (I) IN GENERAL.—Any person
9 compelled to appear under a civil in-
10 vestigative demand for oral testimony
11 pursuant to this section may be ac-
12 companied, represented, and advised
13 by an attorney.
14 (II) CONFIDENTIAL ADVICE.—
15 The attorney may advise the person
16 summoned, in confidence, either upon
17 the request of such person or upon
18 the initiative of the attorney, with re-
19 spect to any question asked of such
20 person.
21 (III) OBJECTIONS.—The person
22 summoned or the attorney may object
23 on the record to any question, in
24 whole or in part, and shall briefly

1 state for the record the reason for the
2 objection.
3 (IV) REFUSAL TO ANSWER.—An
4 objection may properly be made, re-
5 ceived, and entered upon the record
6 when it is claimed that the person
7 summoned is entitled to refuse to an-
8 swer the question on grounds of any
9 constitutional or other legal right or
10 privilege, including the privilege
11 against self-incrimination, but such
12 person shall not otherwise object to or
13 refuse to answer any question, and
14 shall not otherwise interrupt the oral
15 examination, directly or through such
16 person's attorney.
17 (V) PETITION FOR ORDER.—If
18 such person refuses to answer any
19 question, a consumer protection agen-
20 cy may petition the district court of
21 the United States pursuant to this
22 section for an order compelling such
23 person to answer such question.
24 (VI) BASIS FOR COMPELLING
25 TESTIMONY.—If such person refuses

1 to answer any question on grounds of
2 the privilege against self-incrimina-
3 tion, the testimony of such person
4 may be compelled in accordance with
5 the provisions of section 6004 of title
6 18, United States Code.
7 (v) TRANSCRIPTS.—
8 (I) RIGHT TO EXAMINE.—After
9 the testimony of any witness is fully
10 transcribed, the consumer protection
11 agency investigator shall afford the
12 witness (who may be accompanied by
13 an attorney) a reasonable opportunity
14 to examine the transcript.
15 (II) READING THE TRAN-
16 SCRIPT.—The transcript shall be read
17 to or by the witness, unless such ex-
18 amination and reading are waived by
19 the witness.
20 (III) REQUEST FOR CHANGES.—
21 Any changes in form or substance
22 which the witness desires to make
23 shall be entered and identified upon
24 the transcript by the consumer protec-
25 tion agency investigator with a state-

1 ment of the reasons given by the wit-
2 ness for making such changes.
3 (IV) SIGNATURE.—The tran-
4 script shall be signed by the witness,
5 unless the witness in writing waives
6 the signing, is ill, cannot be found, or
7 refuses to sign.
8 (V) CONSUMER PROTECTION
9 AGENCY ACTION IN LIEU OF SIGNA-
10 TURE.—If the transcript is not signed
11 by the witness during the 30-day pe-
12 riod following the date upon which the
13 witness is first afforded a reasonable
14 opportunity to examine it, the con-
15 sumer protection agency investigator
16 shall sign the transcript and state on
17 the record the fact of the waiver, ill-
18 ness, absence of the witness, or the
19 refusal to sign, together with any rea-
20 sons given for the failure to sign.
21 (vi) CERTIFICATION BY INVESTI-
22 GATOR.—The consumer protection agency
23 investigator shall certify on the transcript
24 that the witness was duly sworn by the in-
25 vestigator and that the transcript is a true

1 record of the testimony given by the wit-
2 ness, and the consumer protection agency
3 investigator shall promptly deliver the
4 transcript or send it by registered or cer-
5 tified mail to the custodian.
6 (vii) COPY OF TRANSCRIPT.—The con-
7 sumer protection agency investigator shall
8 furnish a copy of the transcript (upon pay-
9 ment of reasonable charges for the tran-
10 script) to the witness only, except that the
11 consumer protection agency may for good
12 cause limit such witness to inspection of
13 the official transcript of his testimony.
14 (viii) WITNESS FEES.—Any witness
15 appearing for the taking of oral testimony
16 pursuant to a civil investigative demand
17 shall be entitled to the same fees and mile-
18 age which are paid to witnesses in the dis-
19 trict courts of the United States.
20 (3) CONFIDENTIAL TREATMENT OF DEMAND
21 MATERIAL.—
22 (A) IN GENERAL.—Materials received as a
23 result of a civil investigative demand shall be
24 subject to requirements and procedures regard-
25 ing confidentiality, in accordance with regula-

1 tions established by the consumer protection
2 agency.
3 (B) DISCLOSURE TO CONGRESS.—No regu-
4 lation established by a consumer protection
5 agency regarding the confidentiality of mate-
6 rials submitted to, or otherwise obtained by, the
7 consumer protection agency shall be intended to
8 prevent disclosure to either House of Congress
9 or to an appropriate committee of the Congress,
10 except that the consumer protection agency
11 may prescribe regulations allowing prior notice
12 to any party that owns or otherwise provided
13 the material to the consumer protection agency
14 and has designated such material as confiden-
15 tial.
16 (4) PETITION FOR ENFORCEMENT.—
17 (A) IN GENERAL.—Whenever any person
18 fails to comply with any civil investigative de-
19 mand duly served upon such person under this
20 section, or whenever satisfactory copying or re-
21 production of material requested pursuant to
22 the demand cannot be accomplished and such
23 person refuses to surrender such material, the
24 consumer protection agency, through such offi-
25 cers or attorneys as it may designate, may file,

1 in the district court of the United States for
2 any judicial district in which such person re-
3 sides, is found, or transacts business, and serve
4 upon such person, a petition for an order of
5 such court for the enforcement of this section.
6 (B) SERVICE OF PROCESS.—All process of
7 any court to which application may be made as
8 provided in this subsection may be served in
9 any judicial district.
10 (5) PETITION FOR ORDER MODIFYING OR SET-
11 TING ASIDE DEMAND.—
12 (A) IN GENERAL.—Not later than 20 days
13 after the service of any civil investigative de-
14 mand upon any person under subsection (b), or
15 at any time before the return date specified in
16 the demand, whichever period is shorter, or
17 within such period exceeding 20 days after serv-
18 ice or in excess of such return date as may be
19 prescribed in writing, subsequent to service, by
20 any consumer protection agency investigator
21 named in the demand, such person may file
22 with the consumer protection agency a petition
23 for an order by the consumer protection agency
24 modifying or setting aside the demand.

1 (B) COMPLIANCE DURING PENDENCY.—
2 The time permitted for compliance with the de-
3 mand in whole or in part, as deemed proper
4 and ordered by the consumer protection agency,
5 shall not run during the pendency of such peti-
6 tion at the consumer protection agency, except
7 that such person shall comply with any portions
8 of the demand not sought to be modified or set
9 aside.
10 (C) SPECIFIC GROUNDS.—Such petition
11 shall specify each ground upon which the peti-
12 tioner relies in seeking such relief, and may be
13 based upon any failure of the demand to comply
14 with the provisions of this section, or upon any
15 constitutional or other legal right or privilege of
16 such person.
17 (6) CUSTODIAL CONTROL.—At any time during
18 which any custodian is in custody or control of any
19 documentary material, tangible things, reports, an-
20 swers to questions, or transcripts of oral testimony
21 given by any person in compliance with any civil in-
22 vestigative demand, such person may file, in the dis-
23 trict court of the United States for the judicial dis-
24 trict within which the office of such custodian is sit-
25 uated, and serve upon such custodian, a petition for

1 an order of such court requiring the performance by
2 such custodian of any duty imposed upon such cus-
3 todian by this section or regulation prescribed by the
4 consumer protection agency.
5 (7) JURISDICTION OF COURT.—
6 (A) IN GENERAL.—Whenever any petition
7 is filed in any district court of the United
8 States under this section, such court shall have
9 jurisdiction to hear and determine the matter
10 so presented, and to enter such order or orders
11 as may be required to carry into effect the pro-
12 visions of this section.
13 (B) APPEAL.—Any final order so entered
14 shall be subject to appeal pursuant to section
15 1291 of title 28, United States Code.
16 (c) HEARINGS AND ADJUDICATION PROCEEDINGS.—
17 (1) IN GENERAL.—A consumer protection agen-
18 cy may conduct hearings and adjudication pro-
19 ceedings with respect to any person in the manner
20 prescribed by chapter 5 of title 5, United States
21 Code in order to ensure or enforce compliance
22 with—
23 (A) the provisions of this title, including
24 any regulations prescribed by the consumer pro-
25 tection agency under this title; and

1 (B) any other Federal law that the con-
2 sumer protection agency is authorized to en-
3 force, including a consumer protection law, and
4 any regulations or order prescribed thereunder,
5 unless such Federal law specifically limits the
6 consumer protection agency from conducting a
7 hearing or adjudication proceeding and only to
8 the extent of such limitation.
9 (2) SPECIAL RULES FOR CEASE-AND-DESIST
10 PROCEEDINGS.—
11 (A) ISSUANCE.—
12 (i) NOTICE OF CHARGES.—If, in the
13 opinion of a consumer protection agency,
14 any covered person is engaging or has en-
15 gaged in an activity that violates a law,
16 regulation, or any condition imposed in
17 writing on the person by the consumer pro-
18 tection agency, the consumer protection
19 agency may issue and serve upon the per-
20 son a notice of charges with respect to
21 such violation.
22 (ii) CONTENTS OF NOTICE.—The no-
23 tice shall contain a statement of the facts
24 constituting any alleged violation and shall
25 fix a time and place at which a hearing will

1 be held to determine whether an order to
2 cease-and-desist there from should issue
3 against the person.
4 (iii) TIME OF HEARING.—A hearing
5 under this subsection shall be fixed for a
6 date not earlier than 30 days nor later
7 than 60 days after service of such notice
8 unless an earlier or a later date is set by
9 the consumer protection agency at the re-
10 quest of any party so served.
11 (iv) NONAPPEARANCE DEEMED TO BE
12 CONSENT TO ORDER.—Unless the party or
13 parties so served shall appear at the hear-
14 ing personally or by a duly authorized rep-
15 resentative, they shall be deemed to have
16 consented to the issuance of the cease-and-
17 desist order.
18 (v) ISSUANCE OF ORDER.—In the
19 event of such consent, or if upon the
20 record made at any such hearing, the con-
21 sumer protection agency shall find that
22 any violation specified in the notice of
23 charges has been established, the consumer
24 protection agency may issue and serve

1 upon the person an order to cease-and-de-
2 sist from any such violation or practice.
3 (vi) INCLUDES REQUIREMENT FOR
4 CORRECTIVE ACTION.—Such order may, by
5 provisions which may be mandatory or oth-
6 erwise, require the person to cease-and-de-
7 sist from the same, and, further, to take
8 affirmative action to correct the conditions
9 resulting from any such violation.
10 (B) EFFECTIVENESS OF ORDER.—A cease-
11 and-desist order shall take effect at the end of
12 the 30-day period beginning on the date of the
13 service of such order upon the covered person
14 concerned (except in the case of a cease-and-de-
15 sist order issued upon consent, which shall take
16 effect at the time specified therein), and shall
17 remain effective and enforceable as provided
18 therein, except to such extent as it is stayed,
19 modified, terminated, or set aside by action of
20 the consumer protection agency or a reviewing
21 court.
22 (C) DECISION AND APPEAL.—
23 (i) PLACE OF AND PROCEDURES FOR
24 HEARING.—Any hearing provided for in
25 this subsection shall be held in the Federal

1 judicial district or in the territory in which
2 the residence or home office of the person
3 is located unless the person consents to an-
4 other place, and shall be conducted in ac-
5 cordance with the provisions of chapter 5
6 of title 5 of the United States Code.
7 (ii) TIME LIMIT FOR DECISION.—
8 After such hearing, and within 90 days
9 after the consumer protection agency has
10 notified the parties that the case has been
11 submitted to it for final decision, the con-
12 sumer protection agency shall—
13 (I) render its decision (which
14 shall include findings of fact upon
15 which its decision is predicated) and
16 shall issue; and
17 (II) serve upon each party to the
18 proceeding an order or orders con-
19 sistent with the provisions of this sec-
20 tion. Judicial review of any such order
21 shall be exclusively as provided in this
22 subsection.
23 (iii) MODIFICATION OF ORDER GEN-
24 ERALLY.—Unless a petition for review is
25 timely filed in a court of appeals of the

1 United States, as hereinafter provided in
2 subparagraph (D), and thereafter until the
3 record in the proceeding has been filed as
4 so provided, the consumer protection agen-
5 cy may at any time, upon such notice and
6 in such manner as it shall deem proper,
7 modify, terminate, or set aside any such
8 order.
9 (iv) MODIFICATION OF ORDER AFTER
10 FILING RECORD ON APPEAL.—Upon such
11 filing of the record, the consumer protec-
12 tion agency may modify, terminate, or set
13 aside any such order with permission of
14 the court.
15 (D) APPEAL TO COURT OF APPEALS.—
16 (i) IN GENERAL.—Any party to any
17 proceeding under this subsection may ob-
18 tain a review of any order served pursuant
19 to this subsection (other than an order
20 issued with the consent of the person con-
21 cerned) by the filing in the court of ap-
22 peals of the United States for the circuit
23 in which the principal office of the covered
24 person is located, or in the United States
25 Court of Appeals for the District of Co-

1 lumbia Circuit, within 30 days after the
2 date of service of such order, a written pe-
3 tition praying that the order of the con-
4 sumer protection agency be modified, ter-
5 minated, or set aside.
6 (ii) TRANSMITTAL OF COPY TO THE
7 CONSUMER PROTECTION AGENCY.—A copy
8 of such petition shall be forthwith trans-
9 mitted by the clerk of the court to the con-
10 sumer protection agency, and thereupon
11 the consumer protection agency shall file in
12 the court the record in the proceeding, as
13 provided in section 2112 of title 28, United
14 States Code.
15 (iii) JURISDICTION OF COURT.—Upon
16 the filing of such petition, such court shall
17 have jurisdiction, which upon the filing of
18 the record shall except as otherwise pro-
19 vided be exclusive, to affirm, modify, ter-
20 minate, or set aside, in whole or in part,
21 the order of the consumer protection agen-
22 cy.
23 (iv) SCOPE OF REVIEW.—Review of
24 such proceedings shall be had as provided
25 in chapter 7 of title 5, United States Code.

1 (v) FINALITY.—The judgment and de-
2 cree of the court shall be final, except that
3 the same shall be subject to review by the
4 Supreme Court upon certiorari, as pro-
5 vided in section 1254 of title 28, United
6 States Code.
7 (E) NO STAY.—The commencement of pro-
8 ceedings for judicial review under subparagraph
9 (D) shall not, unless specifically ordered by the
10 court, operate as a stay of any order issued by
11 the agency.
12 (3) SPECIAL RULES FOR TEMPORARY CEASE-
13 AND-DESIST PROCEEDINGS.—
14 (A) ISSUANCE.—
15 (i) IN GENERAL.—Whenever the con-
16 sumer protection agency determines that
17 the violation specified in the notice of
18 charges served upon a person pursuant to
19 paragraph (2), or the continuation thereof,
20 is likely to cause the person to be insolvent
21 or otherwise prejudice the interests of con-
22 sumers before the completion of the pro-
23 ceedings conducted pursuant to paragraph
24 (2), the consumer protection agency may
25 issue a temporary order requiring the cov-

1 ered person to cease-and-desist from any
2 such violation or practice and to take af-
3 firmative action to prevent or remedy such
4 insolvency or other condition pending com-
5 pletion of such proceedings.
6 (ii) OTHER REQUIREMENTS.—Any
7 temporary order issued under this para-
8 graph may include any requirement au-
9 thorized under this section.
10 (iii) EFFECT DATE OF ORDER.—Any
11 temporary order issued under this para-
12 graph shall take effect upon service upon
13 the person and, unless set aside, limited, or
14 suspended by a court in proceedings au-
15 thorized by subparagraph (B), shall remain
16 effective and enforceable pending the com-
17 pletion of the administrative proceedings
18 pursuant to such notice and until such
19 time as the consumer protection agency
20 shall dismiss the charges specified in such
21 notice, or if a cease-and-desist order is
22 issued against the person, until the effec-
23 tive date of such order.
24 (B) APPEAL.—Within 10 days after the
25 person concerned has been served with a tem-

1 porary cease-and-desist order, the person may
2 apply to the United States district court for the
3 judicial district in which the home office of the
4 covered person is located, or the United States
5 District Court for the District of Columbia, for
6 an injunction setting aside, limiting, or sus-
7 pending the enforcement, operation, or effec-
8 tiveness of such order pending the completion
9 of the administrative proceedings pursuant to
10 the notice of charges served upon the person
11 under paragraph (2), and such court shall have
12 jurisdiction to issue such injunction.
13 (C) INCOMPLETE OR INACCURATE
14 RECORDS.—
15 (i) TEMPORARY ORDER.—If a notice
16 of charges served under paragraph (2)
17 specifies, on the basis of particular facts
18 and circumstances, that a person's books
19 and records are so incomplete or inac-
20 curate that the consumer protection agency
21 is unable to determine the financial condi-
22 tion of that person or the details or pur-
23 pose of any transaction or transactions
24 that may have a material effect on the fi-
25 nancial condition of that person, the con-

1 sumer protection agency may issue a tem-
2 porary order requiring—
3 (I) the cessation of any activity
4 or practice which gave rise, whether in
5 whole or in part, to the incomplete or
6 inaccurate state of the books or
7 records; or
8 (II) affirmative action to restore
9 such books or records to a complete
10 and accurate state, until the comple-
11 tion of the proceedings under para-
12 graph(2)(A).
13 (ii) EFFECTIVE PERIOD.—Any tem-
14 porary order issued under clause (i)—
15 (I) shall take effect upon service;
16 and
17 (II) unless set aside, limited, or
18 suspended by a court in proceedings
19 under subparagraph (B), shall remain
20 in effect and enforceable until the ear-
21 lier of—
22 (aa) the completion of the
23 proceeding initiated under para-
24 graph (2) in connection with the
25 notice of charges; or

1 (bb) the date the consumer
2 protection agency determines, by
3 examination or otherwise, that
4 the person's books and records
5 are accurate and reflect the fi-
6 nancial condition of the person.
7 (4) SPECIAL RULES FOR ENFORCEMENT OF OR-
8 DERS.—
9 (A) IN GENERAL.—The consumer protec-
10 tion agency may in its discretion apply to the
11 United States district court within the jurisdic-
12 tion of which the principal office of the covered
13 person is located, for the enforcement of any ef-
14 fective and outstanding notice or order issued
15 under this section, and such court shall have ju-
16 risdiction and power to order and require com-
17 pliance herewith.
18 (B) EXCEPTION.—Except as otherwise
19 provided in this subsection, no court shall have
20 jurisdiction to affect by injunction or otherwise
21 the issuance or enforcement of any notice or
22 order or to review, modify, suspend, terminate,
23 or set aside any such notice or order.
24 (5) REGULATIONS.—The consumer protection
25 agencies shall prescribe regulations establishing such

1 procedures as may be necessary to carry out this
2 section.
3 (d) LITIGATION AUTHORITY.—
4 (1) IN GENERAL.—If any person violates a pro-
5 vision of this title, any consumer protection law or
6 any regulation prescribed or order issued by a con-
7 sumer protection agency, the CFPS, or the Council
8 under this title or pursuant to any such authority,
9 a consumer protection agency may commence a civil
10 action against such person to impose a civil penalty
11 or to seek all appropriate legal or equitable relief in-
12 cluding a permanent or temporary injunction as per-
13 mitted by law.
14 (2) REPRESENTATION.—A consumer protection
15 agency may act in its own name and through its own
16 attorneys in enforcing any provision of this title, reg-
17 ulations under this title, or any other law or regula-
18 tion, or in any action, suit, or proceeding to which
19 the consumer protection agency is a party.
20 (3) COMPROMISE OF ACTIONS.—A consumer
21 protection agency may compromise or settle any ac-
22 tion if such compromise is approved by the court.
23 (4) NOTICE TO THE ATTORNEY GENERAL.—
24 When commencing a civil action under this title, any
25 consumer protection law or any regulation there-

1 under, a consumer protection agency shall notify the
2 Attorney General.
3 (5) FORUM.—Any civil action brought under
4 this title may be brought in a United States district
5 court or in any court of competent jurisdiction of a
6 State in a district in which the defendant is located
7 or resides or is doing business, and such court shall
8 have jurisdiction to enjoin such person and to re-
9 quire compliance with this title, any consumer pro-
10 tection law or any regulation prescribed or order
11 issued by a consumer protection agency, the CFPS,
12 or the Council under this title or pursuant to any
13 such authority.
14 (6) TIME FOR BRINGING ACTION.—
15 (A) IN GENERAL.—Except as otherwise
16 permitted by law, no action may be brought
17 under this title more than 3 years after the vio-
18 lation to which an action relates.
19 (B) LIMITATIONS UNDER OTHER FEDERAL
20 LAWS.—
21 (i) For purposes of this subsection, an
22 action arising under this title shall not in-
23 clude claims arising solely under consumer
24 protection laws.

1 (ii) In any action arising solely under
2 a consumer protection law, a consumer
3 protection agency may commence, defend,
4 or intervene in the action in accordance
5 with the requirements of that law, as appli-
6 cable.
7 (e) RELIEF AVAILABLE.—
8 (1) ADMINISTRATIVE PROCEEDINGS OR COURT
9 ACTIONS.—
10 (A) JURISDICTION.—The court (or con-
11 sumer protection agency, as the case may be) in
12 an action or adjudication proceeding brought
13 under this title or any consumer protection law
14 shall have jurisdiction to grant any appropriate
15 legal or equitable relief with respect to a viola-
16 tion of this title or any consumer protection
17 law, including a violation of a regulation pre-
18 scribed or order issued under this title or any
19 consumer protection law.
20 (B) RELIEF.—Such relief may include—
21 (i) rescission or reformation of con-
22 tracts;
23 (ii) refund of moneys or return of real
24 property;
25 (iii) restitution;

1 (iv) compensation for unjust enrich-
2 ment;
3 (v) payment of damages;
4 (vi) public notification regarding the
5 violation, including the costs of notifica-
6 tion;
7 (vii) limits on the activities or func-
8 tions of the person; and
9 (viii) civil money penalties, as set
10 forth more fully in paragraph (4).
11 (C) NO EXEMPLARY OR PUNITIVE DAM-
12 AGES.—Nothing in this paragraph shall be con-
13 strued as authorizing the imposition of exem-
14 plary or punitive damages.
15 (2) RECOVERY OF COSTS.—In any action
16 brought by a consumer protection agency to enforce
17 any provision of this title, any consumer protection
18 law, or any regulation prescribed or order issued by
19 a consumer protection agency, the CFPS, or the
20 Council under this title or pursuant to any such au-
21 thority, a consumer protection agency may recover
22 its costs in connection with prosecuting such action
23 if the consumer protection agency is the prevailing
24 party in the action.

1 (3) CIVIL MONEY PENALTY IN COURT AND AD-
2 MINISTRATIVE ACTIONS.—
3 (A) Any person that violates any provision
4 of this title, any consumer protection law, or
5 any regulation prescribed or order issued by a
6 consumer protection agency, the CFPS, or the
7 Council under this title shall forfeit and pay a
8 civil penalty pursuant to this paragraph deter-
9 mined as follows:
10 (i) FIRST TIER.—For any violation of
11 a final order or condition imposed in writ-
12 ing by a consumer protection agency, a
13 civil penalty shall not exceed $5,000 for
14 each day during which such violation con-
15 tinues.
16 (ii) SECOND TIER.—Notwithstanding
17 clause (i), for any person that knowingly
18 violates this title, any consumer protection
19 law, or any regulation prescribed or order
20 issued by a consumer protection agency,
21 the CFPS, or the Council under this title,
22 a civil penalty shall not exceed $1,000,000
23 for each day during which such violation
24 continues.

1 (B) MITIGATING FACTORS.—In deter-
2 mining the amount of any penalty assessed
3 under subparagraph (A), the consumer protec-
4 tion agency or the court shall take into account
5 the appropriateness of the penalty with respect
6 to—
7 (i) the size of financial resources and
8 good faith of the person charged;
9 (ii) the gravity of the violation;
10 (iii) the severity of the risks to or
11 losses of the consumer, which may take
12 into account the number of products or
13 services sold or provided;
14 (iv) the history of previous violations;
15 and
16 (v) such other matters as justice may
17 require.
18 (C) AUTHORITY TO MODIFY OR REMIT
19 PENALTY.—The consumer protection agency
20 may compromise, modify, or remit any penalty
21 which may be assessed or had already been as-
22 sessed under subparagraph (A). The amount of
23 such penalty, when finally determined, shall be
24 exclusive of any sums owed by the person to the
25 United States in connection with the costs of

1 the proceeding, and may be deducted from any
2 sums owing by the United States to the person
3 charged.
4 (D) NOTICE AND HEARING.—No civil pen-
5 alty may be assessed with respect to a violation
6 of this title, any consumer protection law, or
7 any regulation prescribed or order issued by a
8 consumer protection agency, the CFPS, or the
9 Council, unless—
10 (i) the consumer protection agency
11 gives notice and an opportunity for a hear-
12 ing to the person accused of the violation;
13 or
14 (ii) the appropriate court has ordered
15 such assessment and entered judgment in
16 favor of the consumer protection agency.
17 (f) REFERRALS FOR CRIMINAL PROCEEDINGS.—
18 Whenever a consumer protection agency obtains evidence
19 that any person, either domestic or foreign, has engaged
20 in conduct that may constitute a violation of Federal
21 criminal law, the consumer protection agency shall have
22 the power to transmit such evidence to the Attorney Gen-
23 eral, who may institute criminal proceedings under appro-
24 priate law. Nothing in this section affects any other au-

1 thority of the consumer protection agency to disclose infor-
2 mation.
3 (g) EMPLOYEE PROTECTION.—
4 (1) IN GENERAL.—No person shall terminate or
5 in any other way discriminate against, or cause to
6 be terminated or discriminated against, any em-
7 ployee or any authorized representative of employees
8 by reason of the fact that such employee or rep-
9 resentative has provided information to a consumer
10 protection agency, the CFPS, or the Council, filed,
11 instituted or caused to be filed or instituted any pro-
12 ceeding under this title, any consumer protection
13 law, or has testified or is about to testify in any pro-
14 ceeding resulting from the administration or enforce-
15 ment of the provisions of this title.
16 (2) CONSUMER PROTECTION AGENCY REVIEW
17 OF TERMINATION.—
18 (A) APPLICATION FOR REVIEW.—Any em-
19 ployee or representative of employees who be-
20 lieves that he has been terminated or otherwise
21 discriminated against by any person in violation
22 of paragraph (1) may, within 45 days after
23 such alleged violated occurs, apply to a con-
24 sumer protection agency for review of such ter-
25 mination or alleged discrimination.

1 (B) COPY TO RESPONDENT.—A copy of
2 the application shall be sent to the person who
3 is alleged to have terminated or otherwise dis-
4 criminated against an employee, and such per-
5 son shall be the respondent.
6 (C) INVESTIGATION.—Upon receipt of such
7 application, the consumer protection agency
8 shall cause such investigation to be made as the
9 consumer protection agency deems appropriate.
10 (D) HEARING.—Any investigation under
11 this paragraph shall provide an opportunity for
12 a public hearing at the request of any party to
13 such review to enable the parties to present in-
14 formation relating to such alleged violation.
15 (E) NOTICE OF TIME AND PLACE FOR
16 HEARING.—The parties shall be given written
17 notice of the time and place of the hearing at
18 least 5 days prior to the hearing.
19 (F) PROCEDURE.—Any hearing under this
20 paragraph shall be of record and shall be sub-
21 ject to section 554 of title 5, United States
22 Code.
23 (G) DETERMINATION.—
24 (i) IN GENERAL.—Upon receiving the
25 report of such investigation, the consumer

1 protection agency shall make findings of
2 fact.
3 (ii) ISSUANCE OF DECISION.—If the
4 consumer protection agency finds that
5 there is sufficient evidence in the record to
6 conclude that such a violation did occur,
7 the consumer protection agency shall issue
8 a decision, incorporating an order therein
9 and the consumer protection agency's find-
10 ings, requiring the party committing such
11 violation to take such affirmative action to
12 abate the violation as the consumer protec-
13 tion agency deems appropriate, including
14 reinstating or rehiring the employee or rep-
15 resentative of employees to the former po-
16 sition with compensation.
17 (iii) DENIAL OF APPLICATION.—If the
18 consumer protection agency finds insuffi-
19 cient evidence to support the allegations
20 made in the application, the consumer pro-
21 tection agency shall deny the application.
22 (H) JUDICIAL REVIEW.—An order issued
23 by the consumer protection agency under this
24 paragraph (2) shall be subject to judicial review
25 in the same manner as orders and decisions are

1 subject to judicial review under this title or any
2 consumer protection law.
3 (3) COSTS AND EXPENSES.—Whenever an order
4 is issued under this subsection to abate such viola-
5 tion, at the request of the applicant a sum equal to
6 the aggregate amount of all costs and expenses (in-
7 cluding attorney's fees) determined by the consumer
8 protection agency to have been reasonably incurred
9 by the applicant for, or in connection with, the appli-
10 cation and prosecution of such proceedings shall be
11 assessed against the person committing such viola-
12 tion.
13 (4) EXCEPTION.—This subsection shall not
14 apply to any employee who acting without discretion
15 from the employer of such employee (or the employ-
16 er's agent) deliberately violates any requirement of
17 this title or any consumer protection law.
18 (h) EXCLUSION FOR PERSONS REGULATED BY A
19 STATE INSURANCE REGULATOR.—
20 (1) IN GENERAL.—No provision of this title
21 shall be construed as altering, amending, or affect-
22 ing the authority of any State insurance regulator to
23 adopt rules, initiate enforcement proceedings, or
24 take any other action with respect to a person regu-
25 lated by any State insurance regulator. Except as

1 provided in paragraphs (2) and (3), the Council and
2 the CFPS shall have no authority to exercise any
3 power to enforce this title with respect to a person
4 regulated by any State insurance regulator.

5 (2) DESCRIPTION OF ACTIVITIES.—Paragraph
6 (1) shall not apply to any person described in such
7 paragraph to the extent such person is engaged in
8 any financial activity described in any subparagraph
9 of section 4018(15) or is otherwise subject to any of
10 the enumerated consumer laws or the authorities
11 transferred under section 4018(6).

12 (3) PRESERVATION OF CERTAIN AUTHORI-
13 TIES.—Nothing in this title shall be construed as
14 limiting the authority of the Council or the CFPS
15 from exercising powers under this Act with respect
16 to a person, other than a person regulated by a
17 State insurance regulator, who provides a product or
18 service for or on behalf of a person regulated by a
19 State insurance regulator in connection with a finan-
20 cial activity.

21 **SEC. 4016. COLLECTION OF DEPOSIT ACCOUNT DATA.**

22 (a) PURPOSE.—The purpose of this section is to pro-
23 mote awareness and understanding of the access of indi-
24 viduals and communities to financial services, and to iden-

1 tify business and community development needs and op-
2 portunities.
3 (b) IN GENERAL.—
4 (1) RECORDS REQUIRED.—For each branch,
5 automated teller machine at which deposits are ac-
6 cepted, and other deposit taking service facility with
7 respect to any financial institution, the financial in-
8 stitution shall maintain records of the number and
9 dollar amounts of deposit accounts of customers.
10 (2) GEO-CODED ADDRESSES OF DEPOSITORS.—
11 The customers' addresses maintained pursuant to
12 paragraph (1) shall be geo-coded so that data shall
13 be collected regarding the census tracts of the resi-
14 dence or business location of the customers.
15 (3) IDENTIFICATION OF DEPOSITOR TYPE.—In
16 maintaining records on any deposit account under
17 this section, the financial institution shall also
18 record whether the deposit account is for a residen-
19 tial or commercial customer.
20 (4) PUBLIC AVAILABILITY.—
21 (A) IN GENERAL.—The following informa-
22 tion shall be publicly available on an annual
23 basis—
24 (i) the address and census tracts of
25 each branch, automated teller machine at

1 which deposits are accepted, and other de-
2 posit taking service facility with respect to
3 any financial institution;
4 (ii) the type of deposit account includ-
5 ing whether the account was a checking or
6 savings account; and
7 (iii) data on the number and dollar
8 amounts of the accounts, presented by cen-
9 sus tract location of the residential and
10 commercial customers.
11 (B) PROTECTION OF IDENTITY.—In the
12 publicly available data, any personally identifi-
13 able data element shall be removed so as to pro-
14 tect the identities of the commercial and resi-
15 dential customers.
16 (c) AVAILABILITY OF INFORMATION.—
17 (1) SUBMISSION TO AGENCIES.—The data re-
18 quired to be compiled and maintained under this
19 section by any financial institution shall be sub-
20 mitted annually to the a Federal banking agency, in
21 accordance with rules prescribed by the Federal
22 banking agencies.
23 (2) AVAILABILITY OF INFORMATION.—Informa-
24 tion compiled and maintained under this section
25 shall be retained for not less than 3 years after the

1 date of preparation and shall be made available to
2 the public, upon request, in the form required under
3 rules prescribed by the Federal banking agencies.
4 (d) FEDERAL BANKING AGENCY USE.—The Federal
5 banking agencies—
6 (1) shall assess the distribution of residential
7 and commercial accounts at such financial institu-
8 tion across income and minority level of census
9 tracts; and
10 (2) may use the data for any other purpose as
11 permitted by law.
12 (e) REGULATIONS AND GUIDANCE.—
13 (1) IN GENERAL.—The Federal banking agen-
14 cies shall prescribe such regulations and issue guid-
15 ance as may be necessary to carry out, enforce, and
16 compile data pursuant to this section.
17 (2) DATA COMPILATION REGULATIONS.—The
18 Federal banking agencies shall prescribe regulations
19 regarding the provision of data compiled under this
20 section to such agencies to carry out the purposes of
21 this section and shall issue guidance to financial in-
22 stitutions regarding measures to facilitate compli-
23 ance with the this section and the requirements of
24 regulations prescribed under this section.

1 (f) DEFINITIONS.—For purposes of this section, and
2 notwithstanding section 4018, the following definitions
3 shall apply:
4 (1) CREDIT UNION.—The term "credit union"
5 means a Federal credit union or a State-chartered
6 credit union (as such terms are defined in section
7 101 of the Federal Credit Union Act).
8 (2) DEPOSIT ACCOUNT.—The term "deposit ac-
9 count" includes any checking account, savings ac-
10 count, credit union share account, and other type of
11 account as defined by the consumer protection agen-
12 cies.
13 (3) FEDERAL BANKING AGENCY.—The term
14 "Federal banking agency" means the Board of Gov-
15 ernors of the Federal Reserve System, the head of
16 the agency responsible for chartering and regulating
17 national banks, the Director of the Office of Thrift
18 Supervision, the Federal Deposit Insurance Corpora-
19 tion, and the National Credit Union Administration;
20 and the term "Federal banking agencies" means all
21 of those agencies.
22 (4) FINANCIAL INSTITUTION.—The term "fi-
23 nancial institution"—

1 (A) has the meaning given to the term "in-
2 sured depository institution" in section 3(c)(2)
3 of the Federal Deposit Insurance Act; and
4 (B) includes any credit union.

5 **SEC. 4017. CONFIDENTIALITY.**

6 The Council, the Financial Institutions Examination
7 Council, the CFPS, and the consumer protection agencies
8 shall each issue regulations regarding the confidential
9 treatment of information obtained from persons in connec-
10 tion with the exercise of such entity's authorities under
11 this title. Such regulations shall, to the extent practicable,
12 mirror the provisions provided for the confidential treat-
13 ment of financial records under the Right to Financial
14 Privacy Act of 1978 (12 U.S.C. 3401).

15 **SEC. 4018. DEFINITIONS.**

16 For purposes of this title:
17 (1) AFFILIATE.—The term "affiliate" means
18 any person that controls, is controlled by, or is
19 under common control with another person.
20 (2) BOARD OF GOVERNORS.—The term "Board
21 of Governors" means the Board of Governors of the
22 Federal Reserve System.
23 (3) CFPS.—The term "CFPS" means the Con-
24 sumer Financial Protection Subcommittee estab-
25 lished under section 4003.

1 (4) CONSUMER.—The term "consumer" means
2 an individual or an agent, trustee, or representative
3 acting on behalf of an individual.
4 (5) CONSUMER FINANCIAL PRODUCT OR SERV-
5 ICE.—The term "consumer financial product or
6 service" means any financial product or service to be
7 used by a consumer primarily for personal, family,
8 or household purposes.
9 (6) CONSUMER PROTECTION LAWS.—The term
10 "consumer protection laws" means each of the fol-
11 lowing:
12 (A) The Alternative Mortgage Transaction
13 Parity Act (12 U.S.C. 3801 et seq.).
14 (B) The Electronic Funds Transfer Act
15 (15 U.S.C. 1693 et seq.)
16 (C) The Equal Credit Opportunity Act (15
17 U.S.C. 1691 et seq.).
18 (D) The Fair Credit Reporting Act (15
19 U.S.C. 1681 et seq.), except with respect to sec-
20 tions 615(e), 624, and 628.
21 (E) The Fair Debt Collection Practices Act
22 (15 U.S.C. 1692 et seq.).
23 (F) Subsections (c), (d), (e), and (f) of sec-
24 tion 43 of the Federal Deposit Insurance Act
25 (12 U.S.C. 1831t).

1 (G) Sections 502, 503, 504, 505, 506,
2 507, 508, and 509 of the Gramm-Leach-Bliley
3 Act (15 U.S.C. 6802 et seq.).
4 (H) The Home Mortgage Disclosure Act
5 (12 U.S.C. 2801 et seq.).
6 (I) The Real Estate Settlement Procedures
7 Act (12 U.S.C. 2601 et seq.).
8 (J) The Secure and Fair Enforcement for
9 Mortgage Licensing Act (12 U.S.C. 5101 et
10 seq.).
11 (K) The Truth in Lending Act (15 U.S.C.
12 1601 et seq.).
13 (L) The Truth in Savings Act (12 U.S.C.
14 4301 et seq.).
15 (7) CONSUMER PROTECTION AGENCY.—Except
16 as provided in section 4015, the term "consumer
17 protection agency" means—
18 (A) the Federal Reserve System;
19 (B) the Office of the Comptroller of the
20 Currency;
21 (C) the Office of Thrift Supervision;
22 (D) the Federal Deposit Insurance Cor-
23 poration;
24 (E) the Federal Trade Commission;

1 (F) the National Credit Union Administra-
2 tion;
3 (G) the Department of the Treasury;
4 (H) the Department of Housing and
5 Urban Development;
6 (I) the Securities and Exchange Commis-
7 sion; and
8 (J) the Commodity Futures Trading Com-
9 mission.
10 (8) COUNCIL.—The term "council" means the
11 Consumer Financial Protection Council established
12 under section 2.
13 (9) COVERED PERSON.—
14 (A) IN GENERAL.—The term "covered per-
15 son" means—
16 (i) any person who engages directly or
17 indirectly in a financial activity, in connec-
18 tion with the provision of a consumer fi-
19 nancial product or service; or
20 (ii) any person who, in connection
21 with the provision of a consumer financial
22 product or service, provides a material
23 service to, or processes a transaction on
24 behalf of, a person described in subpara-
25 graph (A).

1 (B) EXCEPTION.—The term "covered per-
2 son" does not include a person regulated by a
3 State insurance regulator.
4 (10) CREDIT.—The term "credit" means the
5 right granted by a person to a consumer to defer
6 payment of a debt, incur debt and defer its payment,
7 or purchase property or services and defer payment
8 for such purchase.
9 (11) CREDIT UNION.—The term "credit union"
10 means a Federal credit union, State credit union, or
11 State-chartered credit union as defined in section
12 101 of the Federal Credit Union Act (12 U.S.C.
13 1752).
14 (12) DEPOSIT.—The term "deposit"—
15 (A) has the same meaning as in section
16 3(l) of the Federal Deposit Insurance Act; and
17 (B) includes a share in a member account
18 (as defined in section 101(5) of the Federal
19 Credit Union Act) at a credit union.
20 (13) DEPOSIT-TAKING ACTIVITY.—The term
21 "deposit-taking activity" means—
22 (A) the acceptance of deposits, the provi-
23 sion of other services related to the acceptance
24 of deposits, or the maintenance of deposit ac-
25 counts;

1 (B) the acceptance of money, the provision
2 of other services related to the acceptance of
3 money, or the maintenance of members' share
4 accounts by a credit union; or
5 (C) the receipt of money or its equivalent,
6 as a consumer protection agency may determine
7 by regulation or order, received or held by the
8 covered person (or an agent for the person) for
9 the purpose of facilitating a payment or trans-
10 ferring funds or value of funds by a consumer
11 to a third party.
12 For the purposes of this title, the consumer protec-
13 tion agencies may determine that the term "deposit-
14 taking activity" includes the receipt of money or its
15 equivalent in connection with the sale or issuance of
16 any payment instrument or stored value product or
17 service.
18 (14) FEDERAL BANKING AGENCY.—The term
19 "Federal banking agency" means the Board of Gov-
20 ernors, the Comptroller of the Currency, the Direc-
21 tor of the Office of Thrift Supervision, the Federal
22 Deposit Insurance Corporation, or the National
23 Credit Union Administration and the term "Federal
24 banking agencies" means all of those agencies.

1 (15) FINANCIAL ACTIVITY.—The term "finan-
2 cial activity" means any of the following activities:
3 (A) Deposit-taking activities.
4 (B) Extending credit and servicing loans,
5 including—
6 (i) acquiring, brokering, or servicing
7 loans or other extensions of credit;
8 (ii) engaging in any other activity
9 usual in connection with extending credit
10 or servicing loans, including performing
11 appraisals of real estate and personal prop-
12 erty and selling or servicing credit insur-
13 ance or mortgage insurance.
14 (C) Check-guaranty services, including—
15 (i) authorizing a subscribing merchant
16 to accept personal checks tendered by the
17 merchant's customers in payment for
18 goods and services; and
19 (ii) purchasing from a subscribing
20 merchant validly authorized checks that
21 are subsequently dishonored.
22 (D) Collecting, analyzing, maintaining, and
23 providing consumer report information or other
24 account information by covered persons, includ-
25 ing information relating to the credit history of

1 consumers and providing the information to a
2 credit grantor who is considering a consumer
3 application for credit or who has extended cred-
4 it to the borrower.
5 (E) Collection of debt related to any con-
6 sumer financial product or service.
7 (F) Providing real estate settlement serv-
8 ices, including providing title insurance.
9 (G) Leasing personal or real property or
10 acting as agent, broker, or adviser in leasing
11 such property if—
12 (i) the lease is on a non-operating
13 basis;
14 (ii) the initial term of the lease is at
15 least 90 days; and
16 (iii) in the case of leases involving real
17 property, at the inception of the initial
18 lease, the transaction is intended to result
19 in ownership of the leased property to be
20 transferred to the lessee, subject to stand-
21 ards prescribed by the consumer protection
22 agencies.
23 (H) Acting as an investment adviser to any
24 person (not subject to regulation by or required
25 to register with the Commodity Futures Trad-

1 ing Commission or the Securities and Exchange
2 Commission).
3 (I) Acting as financial adviser to any per-
4 son, including—
5 (i) providing financial and other re-
6 lated advisory services;
7 (ii) providing educational courses, and
8 instructional materials to consumers on in-
9 dividual financial management matters; or
10 (iii) providing credit counseling, tax-
11 planning or tax-preparation services to any
12 person.
13 (J) Financial data processing, including
14 providing data processing and data trans-
15 mission services, facilities (including data proc-
16 essing and data transmission hardware, soft-
17 ware, documentation, or operating personnel),
18 databases, advice, and access to such services,
19 facilities, or databases by any technological
20 means, if—
21 (i) the data to be processed or fur-
22 nished are financial, banking, or economic;
23 and
24 (ii) the hardware provided in connec-
25 tion therewith is offered only in conjunc-

1 tion with software designed and marketed
2 for the processing and transmission of fi-
3 nancial, banking, or economic data, and
4 where the general purpose hardware does
5 not constitute more than 30 percent of the
6 cost of any packaged offering.
7 (K) Money transmitting.
8 (L) Sale or issuance of stored value.
9 (M) Acting as a money services business.
10 (N) Acting as a custodian of money or any
11 financial instrument.
12 (O) Any other activity that the consumer
13 protection agencies define, by regulation, as a
14 financial activity for the purposes of this title.
15 (P) Except that the term "financial activ-
16 ity" shall not include the business of insurance.
17 (16) FINANCIAL PRODUCT OR SERVICE.—The
18 term "financial product or service" means any prod-
19 uct or service that, directly or indirectly, results
20 from or is related to engaging in 1 or more financial
21 activities.
22 (17) FOREIGN EXCHANGE.—The term "foreign
23 exchange" means the exchange, for compensation, of
24 currency of the United States or of a foreign govern-
25 ment for currency of another government.

1 (18) INSURED DEPOSITORY INSTITUTION.—The
2 term "insured depository institution" has the same
3 meaning as in section 3 of the Federal Deposit In-
4 surance Act.
5 (19) MONEY SERVICES BUSINESS.—The term
6 "money services business" means a covered person
7 that—
8 (A) receives currency, monetary value, or
9 payment instruments for the purpose of ex-
10 changing or transmitting the same by any
11 means, including transmission by wire, fac-
12 simile, electronic transfer, courier, the Internet,
13 or through bill payment services, or other busi-
14 nesses that facilitate third-party transfers with-
15 in the United States or to or from the United
16 States; or
17 (B) issues payment instruments or stored
18 value.
19 (20) MONEY TRANSMITTING.—The term
20 "money transmitting" means the receipt by a cov-
21 ered person of currency, monetary value, or payment
22 instruments for the purpose of transmitting the
23 same to any third-party by any means, including
24 transmission by wire, facsimile, electronic transfer,

1 courier, the Internet, or through bill payment serv-
2 ices.
3 (21) PAYMENT INSTRUMENT.—The term "pay-
4 ment instrument" means a check, draft, warrant,
5 money order, traveler's check, electronic instrument,
6 or other instrument, payment of money, or monetary
7 value (other than currency).
8 (22) PERSON.—The term "person" means an
9 individual, partnership, company, corporation, asso-
10 ciation (incorporated or unincorporated), trust, es-
11 tate, cooperative organization, or other entity.
12 (23) PERSON REGULATED BY A STATE INSUR-
13 ANCE REGULATOR.—The term "person regulated by
14 a State insurance regulator" means any person who
15 is—
16 (A) engaged in the business of insurance;
17 and
18 (B) subject to regulation by any State in-
19 surance regulator, but only to the extent that
20 such person acts in such capacity.
21 (24) PERSON REGULATED BY THE COMMODITY
22 FUTURES TRADING COMMISSION.—The term "person
23 regulated by the Commodity Futures Trading Com-
24 mission" means any futures commission merchant,
25 commodity trading adviser, commodity pool oper-

1 ator, or introducing broker that is subject to the ju-
2 risdiction of the Commodity Futures Trading Com-
3 mission under the Commodity Exchange Act, but
4 only to the extent that the person acts in such ca-
5 pacity.
6 (25) PERSON REGULATED BY THE SECURITIES
7 AND EXCHANGE COMMISSION.—The term "person
8 regulated by the Securities and Exchange Commis-
9 sion" means—
10 (A) a broker or dealer that is required to
11 be registered under the Securities Exchange Act
12 of 1934;
13 (B) an investment adviser that is required
14 to be registered under the Investment Advisers
15 Act of 1940; or
16 (C) an investment company that is re-
17 quired to be registered under the Investment
18 Company Act of 1940—
19 but only to the extent that the person acts in a reg-
20 istered capacity.
21 (26) PROVISION OF A CONSUMER FINANCIAL
22 PRODUCT OR SERVICE.—The term "provision of (or
23 providing) a consumer financial product or service"
24 means the advertisement, marketing, solicitation,

1 sale, disclosure, delivery, or account maintenance or
2 servicing of a consumer financial product or service.
3 (27) RESIDENTIAL MORTGAGE LOAN.—The
4 term "residential mortgage loan" shall have the
5 meaning given such term in section 1503(8) of the
6 Secure and Fair Enforcement for Mortgage Licens-
7 ing Act of 2008.
8 (28) SECRETARY.—The term "Secretary"
9 means the Secretary of the Treasury.
10 (29) STATE.—The term "State" means any
11 State, territory, or possession of the United States,
12 the District of Columbia, Commonwealth of Puerto
13 Rico, Commonwealth of the Northern Mariana Is-
14 lands, Guam, American Samoa, or the United States
15 Virgin Islands.
16 (30) STORED VALUE.—The term "stored value"
17 means funds or monetary value represented in any
18 electronic format, whether or not specially encrypted,
19 and stored or capable of storage on electronic media
20 in such a way as to be retrievable and transferred
21 electronically, and includes a prepaid debit card or
22 product, or any other similar product, regardless of
23 whether the amount of the funds or monetary value
24 may be increased or reloaded.

1 **SEC. 4019. AUTHORIZATION OF APPROPRIATIONS.**

2 There is hereby authorized to be appropriated such

3 sums as may be necessary to carry out this title.

36. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BACHUS, SPENCER OF ALABAMA OR HIS DESIGNEE, DEBATABLE FOR 30 MINUTES

Rev #87

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 4173

OFFERED BY MR. BACHUS OF ALABAMA, MRS. BIGGERT OF ILLINOIS, MR. GARRETT OF NEW JERSEY, MR. NEUGEBAUER OF TEXAS, MR. HENSARLING OF TEXAS, AND MRS. CAPITO OF WEST VIRGINIA

Strike all after the enacting clause and insert the following:

1 **SEC. 1. SHORT TITLE.**

2 This Act may be cited as the "Consumer and Tax-
3 payer Protection Act of 2009".

4 **SEC. 2. TABLE OF CONTENTS.**

5 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 "(1) in which the debtor has its principal place
2 of business in the United States, principal assets in
3 the United States, or in which there is pending a
4 case under title 11 concerning the debtor's affiliate
5 or subsidiary, if a Federal Reserve Bank is located
6 in that district;
7 "(2) if venue does not exist under paragraph
8 (1), in which there is a Federal Reserve Bank and
9 in a Federal Reserve district in which the debtor has
10 its principal place of business in the United States,
11 principal assets in the United States, or in which
12 there is pending a case under title 11 concerning the
13 debtor's affiliate or subsidiary; or
14 "(3) if venue does not exist under paragraph
15 (1) or (2), in which there is a Federal Reserve Bank
16 and in a Federal circuit adjacent to the Federal cir-
17 cuit in which the debtor has its principal place of
18 business or principal assets in the United States.",
19 and
20 (3) by amending the table of sections of chapter
21 87 of such title to insert after the item relating to
22 section 1408 the following:

"1409A. Venue of cases involving non-bank financial institutions.".

1 **SEC. 1003. AMENDMENTS TO TITLE 11 OF THE UNITED**
2 **STATES CODE.**

3 (a) DEFINITIONS.—Section 101 of title 11, United
4 States Code, is amended—

5 (1) by inserting after paragraph (26) the fol-
6 lowing:

7 "(26A) The term 'functional regulator' means
8 the Federal regulatory agency with the primary Fed-
9 eral regulatory authority over the debtor, such as an
10 agency listed in section 509 of the Gramm-Leach-
11 Bliley Act.",

12 (2) by redesignating paragraphs (38A) and
13 (38B) as paragraphs (38B) and (38C), respectively,

14 (3) by inserting after paragraph (38) the fol-
15 lowing:

16 "(38A) the term 'Market Stability and Capital
17 Adequacy Board' means the entity established in
18 section 1006 of the No More Bailouts Act of 2009.",
19 and

20 (4) by inserting after paragraph (40) the fol-
21 lowing:

22 "(40A) The term 'non-bank financial institu-
23 tion' means an institution the business of which is
24 engaging in financial activities that is not an insured
25 depository institution.".

1 (b) APPLICABILITY OF CHAPTERS.—Section 103 of
2 title 11, United States Code, is amended—
3 (1) in subsection (a) by striking "13" and in-
4 serting "13, and 14",
5 (2) by redesignating subsection (k) as sub-
6 section (l), and
7 (3) by inserting after subsection (j) the fol-
8 lowing:
9 "(k) Chapter 14 applies only in a case under such
10 chapter.".
11 (c) WHO MAY BE A DEBTOR.—Section 109 of title
12 11, United States Code, is amended—
13 (1) in subsection (b)—
14 (A) in paragraph (2) by striking "or" at
15 the end,
16 (B) in paragraph (3) by striking the period
17 at the end and insert and inserting "; or", and
18 (C) by adding at the end the following:
19 "(4) a non-bank financial institution that has
20 not been a debtor under chapter 14 of this title.",
21 (2) in subsection (d) by striking "or commodity
22 broker" and inserting ", commodity broker, or a
23 non-bank financial institution", and
24 (3) by adding at the end the following:

1 "(i) Only a non-bank financial institution may be a
2 debtor under chapter 14 of this title.".
3 (d) INVOLUNTARY CASES.—Section 303 of title 11,
4 the United States Code, is amended—
5 (1) in subsection (a) by striking "or 11" and
6 inserting ", 11, or 14", and
7 (2) in subsection (b) by striking "or 11" and
8 inserting ", 11, or 14".
9 (e) OBTAINING CREDIT.—Section 364 of title 11,
10 United States Code, is amended by adding at the end the
11 following:
12 "(g) Notwithstanding any other provision of this sec-
13 tion, the trustee may not, and the court may not authorize
14 the trustee to, obtain credit, if the source of that credit
15 either directly or indirectly is the United States.".
16 (f) CHAPTER 14.—Title 11, United States Code, is
17 amended—
18 (1) by inserting the following after chapter 13:
19 **"CHAPTER 14—ADJUSTMENT TO THE**
20 **DEBTS OF A NON-BANK FINANCIAL IN-**
21 **STITUTION**

"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.

1 **"§ 1401. Inapplicability of other sections**

2 "Except as provided in section 1407, sections
3 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),
4 555, 556, 559, 560, and 561 do not apply in a case under
5 this chapter.

6 **"§ 1402. Applicability of chapter 11 to cases under**
7 **this chapter**

8 "With the exception of sections 1104(d), 1109,
9 1112(a), 1115, and 1116, subchapters I, II, and III of
10 chapter 11 apply in a case under this chapter.

11 **"§ 1403. Prepetition consultation**

12 "(a) Subject to subsection (b)—

13 "(1) a non-bank financial institution may not
14 be a debtor under this chapter unless that institu-
15 tion has, at least 10 days prior to the date of the
16 filing of the petition by such institution, taken part
17 in the consultation described in subsection (c); and

18 "(2) a creditor may not commence an involun-
19 tary case under this chapter unless, at least 10 days
20 prior to the date of the filing of the petition by such
21 creditor, the creditor notifies the non-bank financial
22 institution, the functional regulator, and the Market
23 Stability and Capital Adequacy Board of its intent
24 to file a petition and requests a consultation as de-
25 scribed in subsection (c).

1 "(b) If the non-bank financial institution, the func-
2 tional regulator, and the Market Stability and Capital
3 Adequacy Board, in consultation with any agency charged
4 with administering a nonbankruptcy insolvency regime for
5 any component of the debtor, certify that the immediate
6 filing of a petition under section 301 or 303 is necessary,
7 or that an immediate filing would be in the interests of
8 justice, a petition may be filed notwithstanding subsection
9 (a).

10 "(c) The non-bank financial institution, the func-
11 tional regulator, the Market Stability and Capital Ade-
12 quacy Board, and any agency charged with administering
13 a nonbankruptcy insolvency regime for any component of
14 the debtor shall engage in prepetition consultation in order
15 to attempt to avoid the need for the non-bank financial
16 institution's liquidation or reorganization in bankruptcy,
17 to make any liquidation or reorganization of the non-bank
18 financial institution under this title more orderly, or to
19 aid in the nonbankruptcy resolution of any of the non-
20 bank financial institution's components under its non-
21 bankruptcy insolvency regime. Such consultation shall spe-
22 cifically include the attempt to negotiate forbearance of
23 claims between the non-bank financial institution and its
24 creditors if such forbearance would likely help to avoid the
25 commencement of a case under this title, would make any

1 liquidation or reorganization under this title more orderly,
2 or would aid in the nonbankruptcy resolution of any of
3 the non-bank financial institution's components under its
4 nonbankruptcy insolvency regime. Additionally, the con-
5 sultation shall consider whether, if a petition is filed under
6 section 301 or 303, the debtor should file a motion for
7 an exemption authorized by section 1407.

8 "(d) The court may allow the consultation process to
9 continue for 30 days after the petition, upon motion by
10 the debtor or a creditor. Any post-petition consultation
11 proceedings authorized should be facilitated by the court's
12 mediation services, under seal, and exclude ex parte com-
13 munications.

14 "(e) The Market Stability and Capital Adequacy
15 Board and the functional regulator shall publish and
16 transmit to Congress a report documenting the course of
17 any consultation. Such report shall be published and
18 transmitted to Congress within 30 days of the conclusion
19 of the consultation.

20 "(f) Nothing in this section shall be interpreted to
21 set aside any of the limitations on the use of Federal funds
22 set forth in the No More Bailouts Act of 2009 or the
23 amendments made by such Act.

1 **"§ 1404. Appointment of trustee**

2 "In applying section 1104 to a case under this chap-
3 ter, if the court orders the appointment of a trustee or
4 an examiner, if the trustee or an examiner dies or resigns
5 during the case or is removed under section 324, or if a
6 trustee fails to qualify under section 322, the functional
7 regulator, in consultation with the Market Stability and
8 Capital Adequacy Board, shall submit a list of five disin-
9 terested persons that are qualified and willing to serve as
10 trustees in the case and the United States trustee shall
11 appoint, subject to the court's approval, one of such per-
12 sons to serve as trustee in the case.

13 **"§ 1405. Right to be heard**

14 "(a) The functional regulator, the Market Stability
15 and Capital Adequacy Board, the Federal Reserve, the
16 Department of the Treasury, the Securities and Exchange
17 Commission, and any domestic or foreign agency charged
18 with administering a nonbankruptcy insolvency regime for
19 any component of the debtor may raise and may appear
20 and be heard on any issue in a case under this chapter,
21 but may not appeal from any judgment, order, or decree
22 entered in the case.

23 "(b) A party in interest, including the debtor, the
24 trustee, a creditors' committee, an equity security holders'
25 committee, a creditor, an equity security holder, or any

1 indenture trustee may raise, and may appear and be heard
2 on, any issue in a case under this chapter.

3 **"§ 1406. Right to communicate**

4 "The court is entitled to communicate directly with,
5 or to request information or assistance directly from, the
6 functional regulator, the Market Stability and Capital
7 Adequacy Board, the Board of Governors of the Federal
8 Reserve System, the Department of the Treasury, or any
9 agency charged with administering a nonbankruptcy insol-
10 vency regime for any component of the debtor, subject to
11 the rights of a party in interest to notice and participation.

12 **"§ 1407. Exemption with respect to certain contracts**
13 **or agreements**

14 "(a) Subject to subsection (b)—

15 "(1) upon motion of the debtor, consented to by
16 the Market Stability and Capital Adequacy Board—

17 "(A) the debtor and the estate shall be ex-
18 empt from the operation of sections 362(b)(6),
19 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),
20 555, 556, 559, 560, and 561;

21 "(B) if the Market Stability and Capital
22 Adequacy Board consents to the filing of such
23 motion by the debtor, the Board shall inform
24 the court of its reasons for consenting; and

1 "(C) the debtor may limit its motion, or
2 the board may limit its consent, to exempt the
3 debtor and the estate from the operation of sec-
4 tion 362(b)(6), 362(b)(7), 362(b)(17), 546(e),
5 546(f), 546(g), 555, 556, 559, 560, or 561, or
6 any combination thereof; and
7 "(2) if the Market Stability and Capital Ade-
8 quacy Board does not consent to the filing of a mo-
9 tion by the debtor under paragraph (1), the debtor
10 may file a motion to exempt the debtor and the es-
11 tate from the operation of sections 362(b)(6),
12 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555,
13 556, 559, 560, and 561, or any combination thereof.
14 "(b) The court shall commence a hearing on a motion
15 under subsection (a) not later than 5 days after the filing
16 of the motion to determine whether to maintain, termi-
17 nate, annul, modify, or condition the exemption under sub-
18 section (a)(1) or, in the case of a motion under subsection
19 (a)(2), grant the exemption. The court shall request the
20 filing or briefs by the functional regulator and the Market
21 Stability and Capital Adequacy Board. The court shall de-
22 cide the motion not later than 5 days after commencing
23 such hearing unless—
24 "(1) the parties in interest consent to a exten-
25 sion for a specific period of time; or

1 "(2) except with respect to an exemption from
2 the operation of section 559, the court sua sponte
3 extends for 5 additional days the period for decision
4 if such extension would be in the interests of justice
5 or is required by compelling circumstances.
6 "(c) The court shall maintain, terminate, annul, mod-
7 ify, or condition the exemption under subsection (a)(1),
8 or, in the case of a motion under subsection (a)(2), grant
9 the exemption only upon showing of good cause. In deter-
10 mining whether good cause has been shown, the court
11 shall balance the interests of both debtor and creditors
12 while attempting to preserve the debtor's assets for repay-
13 ment and reorganization of the debtors obligations, or to
14 provide for a more orderly liquidation.
15 "(d) For purposes of timing under section 562 of this
16 title, if a motion is filed under subsection (a)(1) or if a
17 motion is granted under subsection (a)(2), the date or
18 dates of liquidation, termination, or acceleration shall be
19 measured from the earlier of—
20 "(1) the actual date or dates of liquidation, ter-
21 mination, or acceleration; or
22 "(2) the date on which a forward contract mer-
23 chant, stockbroker, financial institution, securities
24 clearing agency, repo participant, financial partici-
25 pant, master netting agreement participant, or swap

1 participant files a notice with the court that it would
2 have liquidated, terminated, or accelerated a con-
3 tract or agreement covered by section 562 of this
4 title had a stay under this section not been in place.

5 **"§ 1408. Conversion or dismissal**

6 "In applying section 1112 to a case under this chap-
7 ter, the debtor may convert a case under this chapter to
8 a case under chapter 7 of this title if the debtor may be
9 a debtor under such chapter unless the debtor is not a
10 debtor in possession.", and

11 (2) by amending the table of chapters of such
12 title by adding at the end the following:

"14. Adjustment to the Debts of a Non-Bank Financial Institution ..... 1401".

13 **SEC. 1004. EFFECTIVE DATE; APPLICATION OF AMEND-**
14 **MENTS.**

15 (a) EFFECTIVE DATE.—Except as provided in sub-
16 section (b), this title and the amendments made by this
17 title shall take effect on the date of the enactment of this
18 title.

19 (b) APPLICATION OF AMENDMENTS.—The amend-
20 ments made by this title shall apply only with respect to
21 cases commenced under title 11 of the United States Code
22 on or after the date of the enactment of this title.

1 **SEC. 1005. REFORMS OF SECTION 13 EMERGENCY POWERS.**

2 (a) RESTRICTIONS ON EMERGENCY POWERS.—The
3 third undesignated paragraph of section 13 of the Federal
4 Reserve Act is amended—

5 (1) by striking "In unusual and exigent" and
6 inserting the following:

7 "(3) EMERGENCY AUTHORITY.—

8 "(A) IN GENERAL.—In unusual and exi-
9 gent"; and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 "(B) REQUIREMENT FOR BROAD AVAIL-
13 ABILITY OF DISCOUNTS.—Subject to the limita-
14 tions provided under subparagraph (A), any au-
15 thorization made pursuant to the authority pro-
16 vided under subparagraph (A) shall require dis-
17 counts to be made broadly available to individ-
18 uals, partnerships, and corporations within the
19 market sector for which such authorization is
20 being made.

21 "(C) TRANSPARENCY AND OVERSIGHT.—

22 "(i) SECRETARY OF THE TREASURY
23 APPROVAL REQUIRED; NOTICE TO THE
24 CONGRESS.—No authorization may be
25 made pursuant to the authority provided
26 under subparagraph (A) unless—

1 "(I) such authorization is first
2 approved by the Secretary of the
3 Treasury; and
4 "(II) the Secretary of the Treas-
5 ury issues a notice to the Congress
6 detailing what authorization the Sec-
7 retary has approved.
8 "(ii) PROGRAMS MOVED ON-BUDGET
9 AFTER 90 DAYS.—On and after the date
10 that is 90 days after the date on which any
11 authorization is made pursuant to the au-
12 thority provided under subparagraph (A),
13 all receipts and disbursements resulting
14 from such authorization shall be counted
15 as new budget authority, outlays, receipts,
16 or deficit or surplus for purposes of—
17 "(I) the budget of the United
18 States Government as submitted by
19 the President;
20 "(II) the congressional budget;
21 and
22 "(III) the Balanced Budget and
23 Emergency Deficit Control Act of
24 1985.

1 "(D) JOINT RESOLUTION OF DIS-
2 APPROVAL.—
3 "(i) IN GENERAL.—With respect to an
4 authorization made pursuant to the au-
5 thority provided under subparagraph (A),
6 if, during the 90-day period beginning on
7 the date the Congress receives a notice de-
8 scribed under subparagraph (C)(i)(II) with
9 respect to such authorization, there is en-
10 acted into law a joint resolution dis-
11 approving such authorization, any action
12 taken under such authorization must be
13 discontinued and unwound not later than
14 the end of the 180-day period beginning on
15 the date that such authorization was made.
16 "(ii) CONTENTS OF JOINT RESOLU-
17 TION.—For the purpose of this paragraph,
18 the term 'joint resolution' means only a
19 joint resolution—
20 "(I) that is introduced not later
21 than 3 calendar days after the date on
22 which the notice referred to in clause
23 (i) is received by the Congress;
24 "(II) which does not have a pre-
25 amble;

1 "(III) the title of which is as fol-
2 lows: 'Joint resolution relating to the
3 disapproval of authorization under the
4 emergency powers of the Federal Re-
5 serve Act'; and
6 "(IV) the matter after the resolv-
7 ing clause of which is as follows:
8 'That Congress disapproves the au-
9 thorization contained in the notice
10 submitted to the Congress by the Sec-
11 retary of the Treasury on the date of
12 _____ relating to
13 _____.' (The blank spaces
14 being appropriately filled in.).
15 "(E) FAST TRACK CONSIDERATION IN
16 HOUSE OF REPRESENTATIVES.—
17 "(i) RECONVENING.—Upon receipt of
18 a notice referred to in subparagraph
19 (D)(i), the Speaker, if the House would
20 otherwise be adjourned, shall notify the
21 Members of the House that, pursuant to
22 this section, the House shall convene not
23 later than the second calendar day after
24 receipt of such report.

1 "(ii) REPORTING AND DISCHARGE.—
2 Any committee of the House of Represent-
3 atives to which a joint resolution is re-
4 ferred shall report it to the House not later
5 than 5 calendar days after the date of re-
6 ceipt of the notice referred to in subpara-
7 graph (D)(i). If a committee fails to report
8 the joint resolution within that period, the
9 committee shall be discharged from further
10 consideration of the joint resolution and
11 the joint resolution shall be referred to the
12 appropriate calendar.
13 "(iii) PROCEEDING TO CONSIDER-
14 ATION.—After each committee authorized
15 to consider a joint resolution reports it to
16 the House or has been discharged from its
17 consideration, it shall be in order, not later
18 than the sixth day after Congress receives
19 the notice referred to in subparagraph
20 (D)(i), to move to proceed to consider the
21 joint resolution in the House. All points of
22 order against the motion are waived. Such
23 a motion shall not be in order after the
24 House has disposed of a motion to proceed
25 on the joint resolution. The previous ques-

1 tion shall be considered as ordered on the
2 motion to its adoption without intervening
3 motion. The motion shall not be debatable.
4 A motion to reconsider the vote by which
5 the motion is disposed of shall not be in
6 order.

7 "(iv) CONSIDERATION.—The joint res-
8 olution shall be considered as read. All
9 points of order against the joint resolution
10 and against its consideration are waived.
11 The previous question shall be considered
12 as ordered on the joint resolution to its
13 passage without intervening motion except
14 two hours of debate equally divided and
15 controlled by the proponent and an oppo-
16 nent. A motion to reconsider the vote on
17 passage of the joint resolution shall not be
18 in order.

19 "(F) FAST TRACK CONSIDERATION IN SEN-
20 ATE.—

21 "(i) RECONVENING.—Upon receipt of
22 a notice referred to in subparagraph
23 (D)(i), if the Senate has adjourned or re-
24 cessed for more than 2 days, the majority
25 leader of the Senate, after consultation

1 with the minority leader of the Senate,
2 shall notify the Members of the Senate
3 that, pursuant to this section, the Senate
4 shall convene not later than the second cal-
5 endar day after receipt of such message.
6 "(ii) PLACEMENT ON CALENDAR.—
7 Upon introduction in the Senate, the joint
8 resolution shall be placed immediately on
9 the calendar.
10 "(iii) FLOOR CONSIDERATION.—
11 "(I) IN GENERAL.—Notwith-
12 standing Rule XXII of the Standing
13 Rules of the Senate, it is in order at
14 any time during the period beginning
15 on the 4th day after the date on
16 which Congress receives a notice re-
17 ferred to in subparagraph (D)(i) and
18 ending on the 6th day after the date
19 on which Congress receives a notice
20 referred to in subparagraph (D)(i)
21 (even though a previous motion to the
22 same effect has been disagreed to) to
23 move to proceed to the consideration
24 of the joint resolution, and all points
25 of order against the joint resolution

1 (and against consideration of the joint
2 resolution) are waived. The motion to
3 proceed is not debatable. The motion
4 is not subject to a motion to postpone.
5 A motion to reconsider the vote by
6 which the motion is agreed to or dis-
7 agreed to shall not be in order. If a
8 motion to proceed to the consideration
9 of the resolution is agreed to, the joint
10 resolution shall remain the unfinished
11 business until disposed of.
12 "(II) DEBATE.—Debate on the
13 joint resolution, and on all debatable
14 motions and appeals in connection
15 therewith, shall be limited to not more
16 than 10 hours, which shall be divided
17 equally between the majority and mi-
18 nority leaders or their designees. A
19 motion further to limit debate is in
20 order and not debatable. An amend-
21 ment to, or a motion to postpone, or
22 a motion to proceed to the consider-
23 ation of other business, or a motion to
24 recommit the joint resolution is not in
25 order.

1 "(III) VOTE ON PASSAGE.—The
2 vote on passage shall occur imme-
3 diately following the conclusion of the
4 debate on a joint resolution, and a
5 single quorum call at the conclusion of
6 the debate if requested in accordance
7 with the rules of the Senate.
8 "(IV) RULINGS OF THE CHAIR
9 ON PROCEDURE.—Appeals from the
10 decisions of the Chair relating to the
11 application of the rules of the Senate,
12 as the case may be, to the procedure
13 relating to a joint resolution shall be
14 decided without debate.
15 "(G) RULES RELATING TO SENATE AND
16 HOUSE OF REPRESENTATIVES.—
17 "(i) COORDINATION WITH ACTION BY
18 OTHER HOUSE.—If, before the passage by
19 one House of a joint resolution of that
20 House, that House receives from the other
21 House a joint resolution, then the following
22 procedures shall apply:
23 "(I) The joint resolution of the
24 other House shall not be referred to a
25 committee.

1 "(II) With respect to a joint res-
2 olution of the House receiving the res-
3 olution—
4 "(aa) the procedure in that
5 House shall be the same as if no
6 joint resolution had been received
7 from the other House; but
8 "(bb) the vote on passage
9 shall be on the joint resolution of
10 the other House.
11 "(ii) TREATMENT OF JOINT RESOLU-
12 TION OF OTHER HOUSE.—If one House
13 fails to introduce or consider a joint resolu-
14 tion under this section, the joint resolution
15 of the other House shall be entitled to ex-
16 pedited floor procedures under this section.
17 "(iii) TREATMENT OF COMPANION
18 MEASURES.—If, following passage of the
19 joint resolution in the Senate, the Senate
20 then receives the companion measure from
21 the House of Representatives, the com-
22 panion measure shall not be debatable.
23 "(iv) VETOES.—If the President ve-
24 toes the joint resolution, debate on a veto
25 message in the Senate under this section

1 shall be 1 hour equally divided between the
2 majority and minority leaders or their des-
3 ignees.
4 "(v) RULES OF HOUSE OF REP-
5 RESENTATIVES AND SENATE.—This sub-
6 paragraph and subparagraphs (D), (E),
7 and (F) are enacted by Congress—
8 "(I) as an exercise of the rule-
9 making power of the Senate and
10 House of Representatives, respec-
11 tively, and as such it is deemed a part
12 of the rules of each House, respec-
13 tively, but applicable only with respect
14 to the procedure to be followed in that
15 House in the case of a joint resolu-
16 tion, and it supersedes other rules
17 only to the extent that it is incon-
18 sistent with such rules; and
19 "(II) with full recognition of the
20 constitutional right of either House to
21 change the rules (so far as relating to
22 the procedure of that House) at any
23 time, in the same manner, and to the
24 same extent as in the case of any
25 other rule of that House.".

1 (b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not
2 later than 90 days after the date of the enactment of this
3 title, all receipts and disbursements resulting from any au-
4 thorization made before the date of the enactment of this
5 title pursuant to the authority granted by the third undes-
6 ignated paragraph of section 13 of the Federal Reserve
7 Act shall be counted as new budget authority, outlays, re-
8 ceipts, or deficit or surplus for purposes of—
9 (1) the budget of the United States Govern-
10 ment as submitted by the President;
11 (2) the congressional budget; and
12 (3) the Balanced Budget and Emergency Def-
13 icit Control Act of 1985.

14 **SEC. 1006. ESTABLISHMENT OF MARKET STABILITY AND**
15 **CAPITAL ADEQUACY BOARD.**

16 (a) IN GENERAL.—There is hereby established the
17 Market Stability and Capital Adequacy Board (hereafter
18 in this title referred to as the "Board") as an independent
19 establishment in the Executive Branch.
20 (b) CONSTITUTION OF BOARD.—Subject to para-
21 graph (4), the Board shall have 12 members as follows:
22 (1) PUBLIC MEMBERS.—The following shall be
23 members of the Board—
24 (A) The Secretary of the Treasury.

1 (B) The Chairman of the Board of Gov-
2 ernors of the Federal Reserve System.
3 (C) The Chairman of the Securities and
4 Exchange Commission.
5 (D) The Chairperson of the Federal De-
6 posit Insurance Corporation.
7 (E) The Chairman of the Commodity Fu-
8 tures Trading Commission.
9 (F) The Comptroller of the Currency.
10 (G) The Director of the Office of Thrift
11 Supervision.
12 (2) PRIVATE MEMBERS.—The Board shall also
13 have 5 members appointed by the President, by and
14 with the advice and consent of the Senate, who shall
15 be appointed from among individuals who—
16 (A) are specially qualified to serve on the
17 Board by virtue of their education, training,
18 and experience; and
19 (B) are not officers or employees of the
20 Federal Government, including the Board of
21 Governors of the Federal Reserve System.
22 (3) CHAIRPERSON.—The Secretary of the
23 Treasury shall serve as the Chairperson of the
24 Board.

1 (4) DIRECTOR OF FHFA AS INTERIM MEM-
2 BER.—Until such time as the charters of the Fed-
3 eral National Mortgage Association and the Federal
4 Home Loan Mortgage Corporation are both repealed
5 pursuant to section 7006(d), the Board shall consist
6 of 13 members with the Director of the Federal
7 Housing Finance Agency serving as a public member
8 under paragraph (1).
9 (c) APPOINTMENTS.—
10 (1) TERM.—
11 (A) IN GENERAL.—Each appointed mem-
12 ber shall be appointed for a term of 5 years.
13 (B) STAGGERED TERMS.—Of the members
14 of the Board first appointed under subsection
15 (b)(2), as designated by the President at the
16 time of appointment—
17 (i) 1 shall be appointed for a term of
18 5 years;
19 (ii) 1 shall be appointed for a term of
20 4 years;
21 (iii) 1 shall be appointed for a term of
22 3 years;
23 (iv) 1 shall be appointed for a term of
24 2 years; and

1 (v) 1 shall be appointed for a term of
2 1 year.
3 (2) INTERIM APPOINTMENTS.—Any member ap-
4 pointed to fill a vacancy occurring before the expira-
5 tion of the term for which such member's prede-
6 cessor was appointed shall be appointed only for the
7 remainder of such term.
8 (3) CONTINUATION OF SERVICE.—Each ap-
9 pointed member may continue to serve after the ex-
10 piration of the term of office to which such member
11 was appointed until a successor has been appointed
12 and qualified.
13 (4) REAPPOINTMENT TO A 2ND TERM.—Each
14 member appointed to a term on the Board under
15 subsection (b)(2), including an interim appointment
16 under paragraph (2), may be reappointed by the
17 President to serve 1 additional term.
18 (d) VACANCY.—
19 (1) IN GENERAL.—Any vacancy on the Board
20 shall be filled in the manner in which the original
21 appointment was made.
22 (2) ACTING OFFICIALS MAY SERVE.—In the
23 event of a vacancy in any position listed in sub-
24 section (b)(1) and pending the appointment of a suc-
25 cessor, or during the absence or disability of the in-

1 dividual serving in such position, any acting official
2 in such position shall be a member of the Board
3 while such vacancy, absence or disability continues
4 and the acting official continues acting in such posi-
5 tion.
6 (e) INELIGIBILITY FOR OTHER OFFICES.—
7 (1) POSTSERVICE RESTRICTION.—No member
8 of the Board may hold any office, position, or em-
9 ployment in any financial institution or affiliate of a
10 financial institution during—
11 (A) the time such member is in office; and
12 (B) the 2-year period beginning on the
13 date such member ceases to serve on the Board.
14 (2) CERTIFICATION.—Upon taking office, each
15 member of the Board shall certify under oath that
16 such member has complied with this subsection and
17 such certification shall be filed with the secretary of
18 the Board.
19 (f) QUALIFICATIONS; INITIAL MEETING.—
20 (1) POLITICAL PARTY AFFILIATION.—Not more
21 than 3 members of the Board appointed under sub-
22 section (b)(2) shall be from the same political party.
23 (2) QUALIFICATIONS GENERALLY.—It is the
24 sense of the Congress that individuals appointed to
25 the Commission should be prominent United States

1 citizens, with national recognition and significant
2 depth of experience commensurate with the duties of
3 the Board.
4 (3) SPECIFIC APPOINTMENT QUALIFICATIONS
5 FOR CERTAIN APPOINTED MEMBERS.—
6 (A) STATE BANK.—Of the members ap-
7 pointed to the Board under subsection (b)(2),
8 at least 1 shall be appointed from among indi-
9 viduals who have had experience as a State
10 bank supervisor or senior management execu-
11 tive with a State depository institution.
12 (B) INSURANCE COMMISSIONER.—Of the
13 members appointed to the Board under sub-
14 section (b)(2), at least 1 shall be appointed
15 from among individuals who have served as a
16 State insurance commissioner or supervisor.
17 (4) INITIAL MEETING.—The Board shall meet
18 and begin the operations of the Board as soon as
19 practicable but not later than the end of the 180-day
20 period beginning the date of the enactment of this
21 title.
22 (g) QUORUM.—Four of the members of the Board
23 designated under subsection (b)(1) and 3 members of the
24 Board appointed under (b)(2) shall constitute a quorum.

1 (h) QUARTERLY MEETINGS.—The Board shall meet
2 upon the call of the chairperson or a majority of the mem-
3 bers at least once in each calendar quarter

4 **SEC. 1007. FUNCTIONS OF BOARD.**

5 (a) PRINCIPAL FUNCTIONS.—The principal functions
6 of the Board shall be to—
7 (1) monitor the interactions of various sectors
8 of the financial system; and
9 (2) identify risks that could endanger the sta-
10 bility and soundness of the system.
11 (b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In
12 carrying out the functions described in subsection (a), the
13 Board shall—
14 (1) review financial industry data collected from
15 the appropriate functional regulators;
16 (2) review insurance industry data, in coordina-
17 tion with State insurance supervisors, for all lines of
18 insurance other than health insurance;
19 (3) monitor government policies and initiatives;
20 (4) review risk management practices within fi-
21 nancial regulatory agencies;
22 (5) review capital standards set by the appro-
23 priate functional regulators and make recommenda-
24 tions to ensure capital and leverage ratios match
25 risks regulated entities are taking on;

1 (6) review transparency and regulatory under-
2 standing of risk exposures in the over-the-counter
3 derivatives markets and make recommendations re-
4 garding the appropriate clearing of trades in those
5 markets through central counterparties;
6 (7) make recommendations regarding any gov-
7 ernment or industry policies and practices that are
8 exacerbating systemic risk; and
9 (8) take such other actions and make such
10 other recommendations as the Board, in the discre-
11 tion of the Board, determines to be appropriate.
12 (c) REPORTS TO FEDERAL FUNCTIONAL REGU-
13 LATORS AND THE CONGRESS.—The Board shall periodi-
14 cally make a report to the Congress and the functional
15 regulators on the findings, conclusions, and recommenda-
16 tions of the Board in a manner and within a time frame
17 that allows the Congress and such regulators to act to con-
18 tain risks posed by specific firms, industry practices, ac-
19 tivities and interactions of entities under different regu-
20 latory regimes, or government policies.
21 (d) TESTIMONY TO CONGRESS.—Not later than Feb-
22 ruary 20 and July 20 of each year, the Chairperson of
23 the Board shall testify to the Congress at semiannual
24 hearings before the Committee on Banking, Housing, and
25 Urban Affairs of the Senate and the Committee on Finan-

1 cial Services of the House of Representatives, about the
2 state of systemic risk in the financial services industry and
3 proposals or recommendations by the Board to address
4 any undue risk.

5 (e) RULE OF CONSTRUCTION.—No provision of this
6 title shall be construed as giving the Board any enforce-
7 ment authority over any financial institution.

8 **SEC. 1008. POWERS OF BOARD.**

9 (a) CONTRACTING.—The Board may, to such extent
10 and in such amounts as are provided in appropriation
11 Acts, enter into contracts to enable the Board to discharge
12 its duties under this title.

13 (b) INFORMATION FROM FEDERAL AGENCIES.—

14 (1) IN GENERAL.—The Board may secure di-
15 rectly from any executive department, agency, or
16 independent establishment, or any other instrumen-
17 tality of the United States information and rec-
18 ommendations for the purposes of this title.

19 (2) DELIVERY OF REQUESTED INFORMATION.—
20 Each executive department, agency, or independent
21 establishment, or any other instrumentality of the
22 United States shall, to the extent authorized by law,
23 furnish any information and recommendations re-
24 quested under paragraph (1) directly to the Board,

1 upon request made by the chairperson or any mem-
2 ber designated by a majority of the Commission.
3 (3) RECEIPT, HANDLING, STORAGE, AND DIS-
4 SEMINATION.—Information shall only be received,
5 handled, stored, and disseminated by members of
6 the Board and its staff consistent with all applicable
7 statutes, regulations, and Executive orders.
8 (c) ASSISTANCE FROM FEDERAL AGENCIES.—
9 (1) GENERAL SERVICES ADMINISTRATION.—
10 The Administrator of General Services shall provide
11 to the Board on a reimbursable basis administrative
12 support and other services for the performance of
13 the Commission's functions.
14 (2) OTHER DEPARTMENTS AND AGENCIES.—In
15 addition to the assistance prescribed in paragraph
16 (1), departments and agencies of the United States
17 may provide to the Commission such services, funds,
18 facilities, staff, and other support services as they
19 may determine advisable and as may be authorized
20 by law, including agencies represented on the Board
21 under section 1006(b)(1).
22 **SEC. 1009. RESPONSIBILITIES OF FEDERAL FUNCTIONAL**
23 **REGULATORS.**
24 (a) FEDERAL FUNCTIONAL REGULATOR DEFINED.—
25 For purposes of this title, the term "Federal functional

1 regulator" has the same meaning as in section 509(2) of
2 the Gramm-Leach-Bliley Act, except that such term in-
3 cludes the Commodity Futures Trading Commission.
4 (b) ASSESSMENTS AND REVIEWS.—In order to ad-
5 dress current regulatory gaps, each Federal functional
6 regulator shall, before each quarterly meeting of the
7 Board—
8 (1) assess the effects on macroeconomic sta-
9 bility of the activities of financial institutions that
10 are subject to the jurisdiction of such agency;
11 (2) review how such financial institutions inter-
12 act with entities outside the jurisdiction of such
13 agency; and
14 (3) report the results of such assessment and
15 review to the Board, together with such rec-
16 ommendations for administrative action as the agen-
17 cy determines to be appropriate.
18 **SEC. 1010. STAFF OF BOARD.**
19 (a) APPOINTMENT AND COMPENSATION.—The chair-
20 person, in accordance with rules agreed upon by the Board
21 and title 5, United States Code, may appoint and fix the
22 compensation of a staff director and such other personnel
23 as may be necessary to enable the Board to carry out its
24 functions.

1 (b) DETAILEES.—Any Federal Government employee
2 may be detailed to the Board and such detailee shall retain
3 the rights, status, and privileges of his or her regular em-
4 ployment without interruption.

5 (c) CONSULTANT SERVICES.—The Board may pro-
6 cure the services of experts and consultants in accordance
7 with section 3109 of title 5, United States Code, but at
8 rates not to exceed the daily rate paid a person occupying
9 a position at level IV of the Executive Schedule under sec-
10 tion 5315 of title 5, United States Code.

11 **SEC. 1011. COMPENSATION AND TRAVEL EXPENSES.**

12 (a) COMPENSATION.—Each member of the Board ap-
13 pointed under section 1006(b)(2) may be compensated at
14 not to exceed the daily equivalent of the annual rate of
15 basic pay in effect for a position at level IV of the Execu-
16 tive Schedule under section 5315 of title 5, United States
17 Code, for each day during which that member is engaged
18 in the actual performance of the duties of the Board.

19 (b) TRAVEL EXPENSES.—While away from their
20 homes or regular places of business in the performance
21 of services for the Board, members of the Board shall be
22 allowed travel expenses, including per diem in lieu of sub-
23 sistence, in the same manner as persons employed inter-
24 mittently in the Government service are allowed expenses
25 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—

1 "(A) the Alternative Mortgage Transaction
2 Parity Act (12 U.S.C. 3801 et seq.);
3 "(B) the Community Reinvestment Act;
4 "(C) the Consumer Leasing Act;
5 "(D) the Electronic Funds Transfer Act
6 (15 U.S.C. 1693 et seq.);
7 "(E) the Equal Credit Opportunity Act
8 (15 U.S.C. 1691 et seq.);
9 "(F) the Fair Credit Billing Act;
10 "(G) the Fair Credit Reporting Act (15
11 U.S.C. 1681 et seq.);
12 "(H) the Fair Debt Collection Practices
13 Act (15 U.S.C. 1692 et seq.);
14 "(I) subsections (c), (d), (e), and (f) of
15 section 43 of the Federal Deposit Insurance Act
16 (12 U.S.C. 1831t);
17 "(J) sections 502, 503, 504, 505, 506,
18 507, 508, and 509 of the Gramm-Leach-Bliley
19 Act (15 U.S.C. 6802 et seq.);
20 "(K) the Home Mortgage Disclosure Act
21 (12 U.S.C. 2801 et seq.);
22 "(L) the Real Estate Settlement Proce-
23 dures Act (12 U.S.C. 2601 et seq.);

1 "(M) the Secure and Fair Enforcement for
2 Mortgage Licensing Act (12 U.S.C. 5101 et
3 seq.);
4 "(N) the Truth in Lending Act (15 U.S.C.
5 1601 et seq.);
6 "(O) the Truth in Savings Act (12 U.S.C.
7 4301 et seq.); and
8 "(5) the term 'expanded Board' means——
9 "(A) the members of the Council described
10 under section 1004(a);
11 "(B) the Secretary of Housing and Urban
12 Development;
13 "(C) the Chairman of the Securities and
14 Exchange Commission;
15 "(D) the Chairman of the Commodities
16 Futures Trading Commission;
17 "(E) the Chairman of the Federal Trade
18 Commission;
19 "(F) the Director of the Federal Housing
20 Finance Agency;
21 "(G) the Director of the Pension Benefit
22 Guarantee Corporation;
23 "(H) the Secretary of the Treasury;
24 "(I) the Secretary of Defense; and
25 "(J) the Secretary of Veterans' Affairs.".

1 (c) DEFINITIONS RELATED TO THE STATE LIAISON
2 COMMITTEE.—Section 1007 of such Act (12 U.S.C. 3306)
3 is amended by inserting after "financial institutions" the
4 following: "and one representative of the National Associa-
5 tion of Insurance Commissioners".

6 **SEC. 2003. FINANCIAL INSTITUTIONS CONSUMER PROTEC-**
7 **TION AND EXAMINATION COUNCIL.**

8 (a) CONSUMER PROTECTION DUTIES.—Section 1006
9 of the Federal Financial Institutions Examination Council
10 Act of 1978 (12 U.S.C. 3305) is amended by adding at
11 the end the following new subsection:

12 "(h) CONSUMER PROTECTION REGULATIONS.—

13 "(1) IN GENERAL.—The Council shall study the
14 need for revised or new regulations for the protec-
15 tion of consumers under the enumerated consumer
16 laws and shall vote on suggested model regulations
17 that the Council determines necessary for the protec-
18 tion of consumers under the enumerated consumer
19 laws.

20 "(2) REGULATIONS ISSUED BY COUNCIL MEM-
21 BERS.—Not later than the end of the 1-month pe-
22 riod beginning on the date a suggested model regula-
23 tion is agreed to by the Council by a majority vote
24 of the members of the Council, the members of the
25 Council, other than the Chairman of the State Liai-

1 son Committee, shall jointly issue regulations based
2 on such suggested model regulation, where applica-
3 ble.
4 "(3) EXPANDED BOARD REQUIRED.—For pur-
5 poses of any action taken pursuant to this sub-
6 section and any reference to the members of the
7 Council under this subsection, the Council shall con-
8 sist of the expanded Board.
9 "(4) NO COUNCIL ENFORCEMENT POWER.—No
10 provision of this subsection shall be construed as
11 conferring any enforcement authority to the Council.
12 "(5) REQUIREMENTS FOR REGULATIONS PRO-
13 POSED BY THE CHAIRMAN OF THE STATE LIAISON
14 COMMITTEE.—
15 "(A) IN GENERAL.—The Chairman of the
16 State Liaison Committee may not propose any
17 suggested model regulation for the Council to
18 vote on under this subsection unless such pro-
19 posed suggested model regulation is accom-
20 panied by a certification from the Chairman of
21 the State Liaison Committee stating that more
22 than half of the States support such proposal.
23 "(B) METHOD OF DETERMINATION.—For
24 purposes of this paragraph, the Chairman of
25 the State Liaison Committee shall determine

1 the method for determining if a State supports
2 a proposal.".
3 (b) ADDITIONAL STAFF.—Section 1008 of such Act
4 (12 U.S.C. 3307) is amended by adding at the end the
5 following new subsection:
6 "(d) CONSUMER PROTECTION STAFF.—
7 "(1) IN GENERAL.—At the request of the Coun-
8 cil, any member of the expanded Board, other than
9 the Chairman of the State Liaison Committee, may
10 detail, on a reimbursable basis, any of the personnel
11 of that member's department or agency to the Coun-
12 cil to assist it in carrying out the Council's duties
13 under subsection (h).
14 "(2) EXPANDED BOARD REQUIRED.—When
15 making any request under this subsection, the Coun-
16 cil shall consist of the expanded Board.".
17 **SEC. 2004. OFFICE OF CONSUMER PROTECTION.**
18 The Federal Financial Institutions Examination
19 Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended
20 by adding at the end the following new section:
21 **"SEC. 1012. OFFICE OF CONSUMER PROTECTION.**
22 "(a) OFFICE OF CONSUMER PROTECTION.—There is
23 hereby established within the Council an Office of Con-
24 sumer Protection (hereinafter in this section referred to
25 as the 'Office').

1 "(b) CONSUMER COMPLAINT HOTLINE AND
2 WEBSITE.—The Office shall establish a toll-free hotline
3 and a website for consumers to contact regarding inquiries
4 or complaints related to consumer protection. Such hotline
5 and website shall then refer such inquiries or complaints
6 to the appropriate Council member, which will then re-
7 spond to the inquiry or complaint.

8 "(c) DISCLOSURE REVIEW.—Not less often than once
9 every 7 years, the Office shall undertake a comprehensive
10 review of the rules and regulations regarding disclosures
11 made by entities under the jurisdiction of the members
12 of the Council to consumers. In making such review the
13 Office shall perform a cost and benefit analysis of each
14 such disclosure and determine if the policy of the members
15 of the Council towards such disclosure should remain the
16 same or be revised.

17 "(d) CONSUMER TESTING REQUIREMENT.—Before
18 prescribing any regulation pursuant to section 1006(h),
19 the Council shall have the Office carry out consumer test-
20 ing with respect to such proposed model regulation.

21 "(e) PERIODIC REVIEW OF REGULATIONS.—

22 "(1) REVIEW.—Not less than once every 7
23 years, the Office shall undertake a comprehensive re-
24 view of all regulations issued by the members of the
25 Council pursuant to section 1006(h)(2). In making

1 such review, the Office shall perform a cost and ben-
2 efit analysis of each regulation and determine if such
3 regulation should remain the same or if such regula-
4 tion should be revised.

5 "(2) REPORT.—After performing a review re-
6 quired by paragraph (1), the Office shall issue a re-
7 port to the Congress describing the review process,
8 any determinations made by the Office, and any re-
9 visions to regulations that the Office determined
10 were needed.".

11 **SEC. 2005. STATE ENFORCEMENT AUTHORITY.**

12 (a) ENFORCEMENT OF COUNCIL REGULATIONS.—
13 The Federal Financial Institutions Examination Council
14 Act of 1978 (12 U.S.C. 3301 et seq.), as amended by sec-
15 tion 2004, is further amended by adding at the end the
16 following new section:

17 **"SEC. 1013. STATE ENFORCEMENT AUTHORITY.**

18 "The chief law enforcement officer of a State, or an
19 official or agency designated by a State, shall have the
20 authority to enforce any regulations issued by the mem-
21 bers of the Council pursuant to section 1006(h)(2) against
22 entities regulated by such State.".

23 (b) ENFORCEMENT OF STATE CONSUMER PROTEC-
24 TION LAWS AGAINST NATIONAL BANKS AND THRIFTS.—
25 Notwithstanding any other provision of law, other than

1 section 5240 of the Revised Statutes and the comparable
2 limitation on visitorial authority applicable to federal sav-
3 ings associations, the chief law enforcement officer of a
4 State, or an official or agency designated by a State, shall
5 have the right to enforce such State's non-preempted con-
6 sumer protection laws against national banks.

7 **SEC. 2006. UNFAIR OR DECEPTIVE ACTS OR PRACTICES AU-**
8 **THORITY TRANSFERRED.**

9 Section 18(f)(1) of the Federal Trade Commission
10 Act (15 U.S.C. 57a(f)(1)) is amended—

11 (1) by striking "(with respect to banks) and the
12 Federal Home Loan Bank Board (with respect to
13 savings and loan institutions described in paragraph
14 (3))" and inserting the following: "(with respect to
15 entities described in paragraph (2)(B)), the Comp-
16 troller of the Currency (with respect to entities de-
17 scribed in paragraph (2)(A)), the Board of Directors
18 of the Federal Deposit Insurance Corporation (with
19 respect to entities described under paragraph
20 (2)(C)), the Director of the Office of Thrift Super-
21 vision (with respect to savings associations or any
22 savings and loan institutions described in paragraph
23 (3)),";

24 (2) by striking "each such Board" and insert-
25 ing "each such entity"; and

1 (3) by striking "any such Board" and inserting
2 "any such entity".

3 **SEC. 2007. EQUALITY OF CONSUMER PROTECTION FUNC-**
4 **TIONS; CONSUMER PROTECTION DIVISIONS.**

5 (a) EQUALITY OF CONSUMER PROTECTION FUNC-
6 TIONS.—With respect to each regulatory agency, the func-
7 tions of such agency related to consumer protection shall
8 be of equal importance to such agency as the other func-
9 tions of such agency.

10 (b) CONSUMER PROTECTION DIVISIONS.—

11 (1) IN GENERAL.—There is hereby established
12 within each regulatory agency a consumer protection
13 division.

14 (2) REPORT.—The head of each consumer pro-
15 tection division established under paragraph (1)
16 shall submit an annual report to the Congress detail-
17 ing the performance of the regulatory agency in
18 which such division is located in enforcing the con-
19 sumer protection laws.

20 (c) REGULATORY AGENCY DEFINED.—For purposes
21 of this section, the term "regulatory agency" means the
22 Office of the Comptroller of the Currency, the Board of
23 Governors of the Federal Reserve System, the Federal De-
24 posit Insurance Corporation, the Office of Thrift Super-
25 vision, the National Credit Union Administration, the

1 Federal Trade Commission, and the Department of Hous-
2 ing and Urban Development.

3 **SEC. 2008. PROHIBITION ON CHARTER CONVERSIONS**
4 **WHILE UNDER REGULATORY SANCTION.**

5 With respect to an entity for which there is an appro-
6 priate Federal banking agency, as such term is defined
7 under section 3(q) of the Federal Deposit Insurance Act
8 (12 U.S.C. 1813(q)), such agency shall issue regulations
9 prohibiting such an entity from converting the type of
10 such entity's charter during any time in which such entity
11 is under a regulatory sanction by such agency.

12 TITLE III—ANTI-FRAUD
13 PROVISIONS

14 **SEC. 3001. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**
15 **CEASE AND DESIST PROCEEDINGS.**

16 (a) UNDER THE SECURITIES ACT OF 1933.—Section
17 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is
18 amended by adding at the end the following new sub-
19 section:

20 "(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—
21 "(1) GROUNDS FOR IMPOSING.—In any cease-
22 and-desist proceeding under subsection (a), the
23 Commission may impose a civil penalty on a person
24 if it finds, on the record after notice and opportunity
25 for hearing, that—

1 "(A) such person—

2 "(i) is violating or has violated any
3 provision of this title, or any rule or regu-
4 lation thereunder; or

5 "(ii) is or was a cause of the violation
6 of any provision of this title, or any rule or
7 regulation thereunder; and

8 "(B) such penalty is in the public interest.

9 "(2) MAXIMUM AMOUNT OF PENALTY.—

10 "(A) FIRST TIER.—The maximum amount
11 of penalty for each act or omission described in
12 paragraph (1) shall be $6,500 for a natural
13 person or $65,000 for any other person.

14 "(B) SECOND TIER.—Notwithstanding
15 paragraph (A), the maximum amount of pen-
16 alty for each such act or omission shall be
17 $65,000 for a natural person or $325,000 for
18 any other person if the act or omission de-
19 scribed in paragraph (1) involved fraud, deceit,
20 manipulation, or deliberate or reckless dis-
21 regard of a regulatory requirement.

22 "(C) THIRD TIER.—Notwithstanding para-
23 graphs (A) and (B), the maximum amount of
24 penalty for each such act or omission shall be

1 $130,000 for a natural person or $650,000 for
2 any other person if—
3 "(i) the act or omission described in
4 paragraph (1) involved fraud, deceit, ma-
5 nipulation, or deliberate or reckless dis-
6 regard of a regulatory requirement; and
7 "(ii) such act or omission directly or
8 indirectly resulted in substantial losses or
9 created a significant risk of substantial
10 losses to other persons or resulted in sub-
11 stantial pecuniary gain to the person who
12 committed the act or omission.
13 "(3) EVIDENCE CONCERNING ABILITY TO
14 PAY.—In any proceeding in which the Commission
15 may impose a penalty under this section, a respond-
16 ent may present evidence of the respondent's ability
17 to pay such penalty. The Commission may, in its
18 discretion, consider such evidence in determining
19 whether such penalty is in the public interest. Such
20 evidence may relate to the extent of such person's
21 ability to continue in business and the collectability
22 of a penalty, taking into account any other claims of
23 the United States or third parties upon such per-
24 son's assets and the amount of such person's as-
25 sets.".

1 (b) UNDER THE SECURITIES EXCHANGE ACT OF
2 1934.—Subsection (a) of section 21B of the Securities
3 Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amend-
4 ed—
5 (1) by striking "(a) COMMISSION AUTHORITY
6 TO ASSESS MONEY PENALTIES.—In any pro-
7 ceeding" and inserting the following:
8 "(a) COMMISSION AUTHORITY TO ASSESS MONEY
9 PENALTIES.—
10 "(1) IN GENERAL.—In any proceeding";
11 (2) by redesignating paragraphs (1) through
12 (4) of such subsection as subparagraphs (A) through
13 (D), respectively and moving such redesignated sub-
14 paragraphs and the matter following such subpara-
15 graphs 2 ems to the right; and
16 (3) by adding at the end of such subsection the
17 following new paragraph:
18 "(2) CEASE-AND-DESIST PROCEEDINGS.—In
19 any proceeding instituted pursuant to section 21C of
20 this title against any person, the Commission may
21 impose a civil penalty if it finds, on the record after
22 notice and opportunity for hearing, that such per-
23 son—

1 "(A) is violating or has violated any provi-
2 sion of this title, or any rule or regulation
3 thereunder; or
4 "(B) is or was a cause of the violation of
5 any provision of this title, or any rule or regula-
6 tion thereunder.".
7 (c) UNDER THE INVESTMENT COMPANY ACT OF
8 1940.—Paragraph (1) of section 9(d) of the Investment
9 Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amend-
10 ed—
11 (1) by striking "(1) AUTHORITY OF COMMIS-
12 SION.—In any proceeding" and inserting the fol-
13 lowing:
14 "(1) AUTHORITY OF COMMISSION.—
15 "(A) IN GENERAL.—In any proceeding";
16 (2) by redesignating subparagraphs (A) through
17 (C) of such paragraph as clauses (i) through (iii),
18 respectively and by moving such redesignated clauses
19 and the matter following such subparagraphs 2 ems
20 to the right; and
21 (3) by adding at the end of such paragraph the
22 following new subparagraph:
23 "(B) CEASE-AND-DESIST PROCEEDINGS.—
24 In any proceeding instituted pursuant to sub-
25 section (f) against any person, the Commission

1 may impose a civil penalty if it finds, on the
2 record after notice and opportunity for hearing,
3 that such person—
4 "(i) is violating or has violated any
5 provision of this title, or any rule or regu-
6 lation thereunder; or
7 "(ii) is or was a cause of the violation
8 of any provision of this title, or any rule or
9 regulation thereunder.".
10 (d) UNDER THE INVESTMENT ADVISERS ACT OF
11 1940.—Paragraph (1) of section 203(i) of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
13 ed—
14 (1) by striking "(1) AUTHORITY OF COMMIS-
15 SION.—In any proceeding" and inserting the fol-
16 lowing:
17 "(1) AUTHORITY OF COMMISSION.—
18 "(A) IN GENERAL.—In any proceeding";
19 (2) by redesignating subparagraphs (A) through
20 (D) of such paragraph as clauses (i) through (iv),
21 respectively and moving such redesignated clauses
22 and the matter following such subparagraphs 2 ems
23 to the right; and
24 (3) by adding at the end of such paragraph the
25 following new subparagraph:

1 "(B) CEASE-AND-DESIST PROCEEDINGS.—
2 In any proceeding instituted pursuant to sub-
3 section (k) against any person, the Commission
4 may impose a civil penalty if it finds, on the
5 record after notice and opportunity for hearing,
6 that such person—
7 "(i) is violating or has violated any
8 provision of this title, or any rule or regu-
9 lation thereunder; or
10 "(ii) is or was a cause of the violation
11 of any provision of this title, or any rule or
12 regulation thereunder.".

13 **SEC. 3002. FORMERLY ASSOCIATED PERSONS.**

14 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
15 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
16 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
17 4(c)(8)) is amended by striking "any member or em-
18 ployee" and inserting "any person who is, or at the time
19 of the alleged misconduct was, a member or employee".

20 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
21 CURITIES BROKER OR DEALER.—Section 15C of the Se-
22 curities Exchange Act of 1934 (15 U.S.C. 78o–5) is
23 amended—
24 (1) in subsection (c)(1)(C), by striking "or
25 seeking to become associated," and inserting "seek-

1 ing to become associated, or, at the time of the al-
2 leged misconduct, associated or seeking to become
3 associated";
4 (2) in subsection (c)(2)(A), by inserting ", seek-
5 ing to become associated, or, at the time of the al-
6 leged misconduct, associated or seeking to become
7 associated" after "any person associated"; and
8 (3) in subsection (c)(2)(B), by inserting ",
9 seeking to become associated, or, at the time of the
10 alleged misconduct, associated or seeking to become
11 associated" after "any person associated".
12 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
13 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-
14 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
16 by inserting ", or, as to any act or practice, or omission
17 to act, while associated with a member, formerly associ-
18 ated" after "member or a person associated".
19 (d) PARTICIPANT OF A REGISTERED CLEARING
20 AGENCY.—Section 21(a)(1) of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
22 ing "or, as to any act or practice, or omission to act, while
23 a participant, was a participant," after "in which such
24 person is a participant,".

1 (e) OFFICER OR DIRECTOR OF A SELF-REGULATORY
2 ORGANIZATION.—Section 19(h)(4) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—
4 (1) by striking "any officer or director" and in-
5 serting "any person who is, or at the time of the al-
6 leged misconduct was, an officer or director"; and
7 (2) by striking "such officer or director" and
8 inserting "such person".
9 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
10 PANY.—Section 36(a) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–35(a)) is amended—
12 (1) by striking "a person serving or acting" and
13 inserting "a person who is, or at the time of the al-
14 leged misconduct was, serving or acting"; and
15 (2) by striking "such person so serves or acts"
16 and inserting "such person so serves or acts, or at
17 the time of the alleged misconduct, so served or
18 acted".
19 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
20 ING FIRM.—
21 (1) SARBANES-OXLEY ACT OF 2002 AMEND-
22 MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act
23 of 2002 (15 U.S.C. 7201(9)) is amended by adding
24 at the end the following new subparagraph:

1 "(C) INVESTIGATIVE AND ENFORCEMENT
2 AUTHORITY.—For purposes of the provisions of
3 sections 3(c), 101(c), 105, and 107(c) and
4 Board or Commission rules thereunder, except
5 to the extent specifically excepted by such rules,
6 the terms defined in subparagraph (A) shall in-
7 clude any person associated, seeking to become
8 associated, or formerly associated with a public
9 accounting firm, except—
10 "(i) the authority to conduct an inves-
11 tigation of such person under section
12 105(b) shall apply only with respect to any
13 act or practice, or omission to act, while
14 such person was associated or seeking to
15 become associated with a registered public
16 accounting firm; and
17 "(ii) the authority to commence a pro-
18 ceeding under section 105(c)(1), or impose
19 disciplinary sanctions under section
20 105(c)(4), against such person shall apply
21 only on—
22 "(I) the basis of conduct occur-
23 ring while such person was associated
24 or seeking to become associated with
25 a registered public accounting firm; or

1 "(II) non-cooperation as de-
2 scribed in section 105(b)(3) with re-
3 spect to a demand in a Board inves-
4 tigation for testimony, documents, or
5 other information relating to a period
6 when such person was associated or
7 seeking to become associated with a
8 registered public accounting firm.".
9 (2) SECURITIES EXCHANGE ACT OF 1934
10 AMENDMENT.—Section 21(a)(1) of the Securities
11 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
12 amended by striking "or a person associated with
13 such a firm" and inserting ", a person associated
14 with such a firm, or, as to any act, practice, or omis-
15 sion to act while associated with such firm, a person
16 formerly associated with such a firm".
17 (h) SUPERVISORY PERSONNEL OF AN AUDIT
18 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
19 2002 (15 U.S.C. 7215(c)(6)) is amended—
20 (1) in subparagraph (A), by striking "the su-
21 pervisory personnel" and inserting "any person who
22 is, or at the time of the alleged failure reasonably to
23 supervise was, a supervisory person"; and
24 (2) in subparagraph (B)—

1 (A) by striking "No associated person"
2 and inserting "No current or former super-
3 visory person"; and
4 (B) by striking "any other person" and in-
5 serting "any associated person".
6 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
7 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
8 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
9 striking "any member" and inserting "any person who is,
10 or at the time of the alleged misconduct was, a member".
11 **SEC. 3003. COLLATERAL BARS.**
12 (a) SECTION 15(b)(6)(A) OF THE SECURITIES EX-
13 CHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Secu-
14 rities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is
15 amended by striking "12 months, or bar such person from
16 being associated with a broker or dealer," and inserting
17 "12 months, or bar any such person from being associated
18 with a broker, dealer, investment adviser, municipal secu-
19 rities dealer, or transfer agent,".
20 (b) SECTION 15B(c)(4) OF THE SECURITIES EX-
21 CHANGE ACT OF 1934.—Section 15B(c)(4) of the Securi-
22 ties Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is
23 amended by striking "twelve months or bar any such per-
24 son from being associated with a municipal securities deal-
25 er," and inserting "twelve months or bar any such person

1 from being associated with a broker, dealer, investment
2 adviser, municipal securities dealer, or transfer agent,".
3 (c) SECTION 17A(c)(4)(C) OF THE SECURITIES EX-
4 CHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Se-
5 curities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C))
6 is amended by striking "twelve months or bar any such
7 person from being associated with the transfer agent,"
8 and inserting "twelve months or bar any such person from
9 being associated with any transfer agent, broker, dealer,
10 investment adviser, or municipal securities dealer,".
11 (d) SECTION 203(f) OF THE INVESTMENT ADVISERS
12 ACT OF 1940.—Section 203(f) of the Investment Advisers
13 Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking
14 "twelve months or bar any such person from being associ-
15 ated with an investment adviser," and inserting "twelve
16 months or bar any such person from being associated with
17 an investment adviser, broker, dealer, municipal securities
18 dealer, or transfer agent,".
19 **SEC. 3004. UNLAWFUL MARGIN LENDING.**
20 Section 7(c)(1)(A) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking ";
22 and" and inserting "; or".
23 **SEC. 3005. NATIONWIDE SERVICE OF PROCESS.**
24 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
25 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by

1 inserting after the second sentence the following: "In any
2 civil action instituted by the Commission under this title
3 in a United States district court for any judicial district,
4 subpoenas issued to compel the attendance of witnesses
5 or the production of documents or tangible things (or
6 both) at any hearing or trial may be served at any place
7 within the United States. Rule 45(c)(3)(A)(ii) of the Fed-
8 eral Rules of Civil Procedure does not apply to a subpoena
9 so issued.".

10 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
11 27 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78aa) is amended by inserting after the third sentence the
13 following: "In any civil action instituted by the Commis-
14 sion under this title in a United States district court for
15 any judicial district, subpoenas issued to compel the at-
16 tendance of witnesses or the production of documents or
17 tangible things (or both) at any hearing or trial may be
18 served at any place within the United States. Rule
19 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
20 does not apply to a subpoena so issued.".

21 (c) INVESTMENT COMPANY ACT OF 1940.—Section
22 44 of the Investment Company Act of 1940 (15 U.S.C.
23 80a–43) is amended by inserting after the fourth sentence
24 the following: "In any civil action instituted by the Com-
25 mission under this title in a United States district court

1 for any judicial district, subpoenas issued to compel the
2 attendance of witnesses or the production of documents
3 or tangible things (or both) at any hearing or trial may
4 be served at any place within the United States. Rule
5 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
6 does not apply to a subpoena so issued.".

7 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
8 214 of the Investment Advisers Act of 1940 (15 U.S.C.
9 80b–14) is amended by inserting after the third sentence
10 the following: "In any civil action instituted by the Com-
11 mission under this title in a United States district court
12 for any judicial district, subpoenas issued to compel the
13 attendance of witnesses or the production of documents
14 or tangible things (or both) at any hearing or trial may
15 be served at any place within the United States. Rule
16 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure
17 does not apply to a subpoena so issued.".

18 **SEC. 3006. REAUTHORIZATION OF THE FINANCIAL CRIMES**
19 **ENFORCEMENT NETWORK.**

20 (a) FINDINGS.—

21 (1) The Congress finds as follows:

22 (A) The work of the Financial Crimes En-
23 forcement Network (hereinafter in this section
24 referred to as "FinCEN") is essential to safe-
25 guard the United States financial system and

1 its international affiliates from the abuses of fi-
2 nancial crime, including terrorist financing,
3 weapons of mass destruction proliferation, and
4 money laundering.
5 (B) All avenues of financial intermediation
6 are vulnerable to abuse by illicit actors, and
7 FinCEN exercises the authorities of the Bank
8 Secrecy Act over a broad range of financial in-
9 stitutions.
10 (2) The Congress further finds and recognizes
11 the recent establishment by FinCEN of an Inter-
12 national Programs Division to expand and enhance
13 global financial intelligence sharing initiatives aimed
14 at combating transnational crime threats facing
15 United States financial markets, and takes note of
16 FinCEN's efforts to collaborate with foreign finan-
17 cial intelligence unit partners on analytical projects
18 to identify and address emerging threats and
19 vulnerabilities.
20 (3) The Congress further finds and recognizes
21 the role of FinCEN in discovering and investigating
22 widespread fraud in the mortgage market and else-
23 where in the financial services industry. Alongside
24 an effective licensing and registration system for all
25 mortgage originators, a vigilant FinCEN is critical

1 to the recovery of our housing markets and con-
2 sumer confidence in both the home buying process
3 and the financial services industry as a whole.

4 (b) REAUTHORIZATION.—Section 310(d)(1) of title
5 31, United States Code, is amended by striking "such
6 sums as may be necessary for fiscal years 2002, 2003,
7 2004, and 2005" and inserting "not more than
8 $105,500,000 for fiscal year 2010, and such sums as may
9 be necessary for fiscal years 2011, 2012, 2013, and
10 2014".

11 (c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION
12 OF APPROPRIATIONS.—In addition to such other amounts
13 otherwise made available or appropriated to FinCEN,
14 there are authorized to be appropriated to FinCEN
15 $15,000,000 to be used specifically for efforts to detect
16 financial fraud. Such sums are authorized to remain avail-
17 able until expended.

18 **SEC. 3007. FAIR FUND IMPROVEMENTS.**

19 (a) AMENDMENT.—Subsection (a) of section 308 of
20 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is
21 amended to read as follows:

22 "(a) CIVIL PENALTIES TO BE USED FOR THE RE-
23 LIEF OF VICTIMS.—If in any judicial or administrative ac-
24 tion brought by the Commission under the securities laws
25 (as such term is defined in section 3(a)(47) of the Securi-

1 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the
2 Commission obtains a civil penalty against any person for
3 a violation of such laws, the amount of such civil penalty
4 shall, on the motion or at the direction of the Commission,
5 be added to and become part of a disgorgement fund or
6 other fund established for the benefit of the victims of
7 such violation.".

8 (b) CONFORMING AMENDMENTS.—Section 308 of
9 such Act is amended—

10 (1) in subsection (b)—

11 (A) by striking "for a disgorgement fund
12 described in subsection (a)" and inserting "for
13 a disgorgement fund or other fund described in
14 subsection (a)"; and

15 (B) by striking "in the disgorgement fund"
16 and inserting "in such fund"; and

17 (2) by striking subsection (e).

18 TITLE IV—OVER-THE-COUNTER
19 DERIVATIVES MARKETS

20 **SECTION 4001. SHORT TITLE.**

21 This title may be cited as the "Over-the-Counter De-
22 rivatives 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 contingency associated with a potential financial, economic, or commercial consequence;

1 "(iii) provides on an executory basis
2 for the exchange, on a fixed or contingent
3 basis, of one or more payments based on
4 the value or level of one or more interest
5 or other rates, currencies, commodities, se-
6 curities, instruments of indebtedness, indi-
7 ces, quantitative measures, or other finan-
8 cial or economic interests or property of
9 any kind, or any interest therein or based
10 on the value thereof, and that transfers, as
11 between the parties to the transaction, in
12 whole or in part, the financial risk associ-
13 ated with a future change in any such
14 value or level without also conveying a cur-
15 rent or future direct or indirect ownership
16 interest in an asset (including any enter-
17 prise or investment pool) or liability that
18 incorporates the financial risk so trans-
19 ferred, including any agreement, contract,
20 or transaction commonly known as an in-
21 terest rate swap, a rate floor, rate cap,
22 rate collar, cross-currency rate swap, basis
23 swap, currency swap, total return swap,
24 equity index swap, equity swap, debt index
25 swap, debt swap, credit spread, credit de-

1 fault swap, credit swap, weather swap, en-
2 ergy swap, metal swap, agricultural swap,
3 emissions swap, or commodity swap;
4 "(iv) is an agreement, contract, or
5 transaction that is, or in the future be-
6 comes, commonly known to the trade as a
7 swap; or
8 "(v) is any combination or permuta-
9 tion of, or option on, any agreement, con-
10 tract, or transaction described in any of
11 clauses (i) through (iv).
12 "(B) EXCLUSIONS.—The term 'swap' does
13 not include:
14 "(i) any contract of sale of a com-
15 modity for future delivery or security fu-
16 tures product traded on or subject to the
17 rules of any board of trade designated as
18 a contract market under section 5 or 5f;
19 "(ii) any sale of a nonfinancial com-
20 modity for deferred shipment or delivery,
21 so long as such transaction is physically
22 settled;
23 "(iii) any put, call, straddle, option, or
24 privilege on any security, certificate of de-
25 posit, or group or index of securities, in-

1 cluding any interest therein or based on
2 the value thereof, that is subject to the Se-
3 curities Act of 1933 (15 U.S.C. 77a et
4 seq.) and the Securities Exchange Act of
5 1934 (15 U.S.C. 78a et seq.);
6 "(iv) any put, call, straddle, option, or
7 privilege relating to foreign currency en-
8 tered into on a national securities exchange
9 registered pursuant to section 6(a) of the
10 Securities Exchange Act of 1934 (15
11 U.S.C. 78f(a));
12 "(v) any agreement, contract, or
13 transaction providing for the purchase or
14 sale of one or more securities on a fixed
15 basis that is subject to the Securities Act
16 of 1933 (15 U.S.C. 77a et seq.) and the
17 Securities Exchange Act of 1934 (15
18 U.S.C. 78a et seq.);
19 "(vi) any agreement, contract, or
20 transaction providing for the purchase or
21 sale of one or more securities on a contin-
22 gent basis that is subject to the Securities
23 Act of 1933 (15 U.S.C. 77a et seq.) and
24 the Securities Exchange Act of 1934 (15
25 U.S.C. 78a et seq.), unless such agree-

1 ment, contract, or transaction predicates
2 such purchase or sale on the occurrence of
3 a bona fide contingency that might reason-
4 ably be expected to affect or be affected by
5 the creditworthiness of a party other than
6 a party to the agreement, contract, or
7 transaction;
8 "(vii) any note, bond, or evidence of
9 indebtedness that is a security as defined
10 in section 2(a)(1) of the Securities Act of
11 1933 (15 U.S.C. 77b(a)(1));
12 "(viii) any agreement, contract, or
13 transaction that is—
14 "(I) based on a security; and
15 "(II) entered into directly or
16 through an underwriter (as defined in
17 section 2(a)(11) of the Securities Act
18 of 1933) (15 U.S.C. 77b(a)(11)) by
19 the issuer of such security for the
20 purposes of raising capital, unless
21 such agreement, contract, or trans-
22 action is entered into to manage a
23 risk associated with capital raising;
24 "(ix) any foreign exchange swap;
25 "(x) any foreign exchange forward;

1 "(xi) any agreement, contract, or
2 transaction a counterparty of which is a
3 Federal Reserve bank or the United States
4 Government, or an agency of the United
5 States Government that is expressly
6 backed by the full faith and credit of the
7 United States; and
8 "(xii) any security-based swap, other
9 than a security-based swap as described in
10 paragraph (36](C).
11 "(C) RULE OF CONSTRUCTION REGARDING
12 MASTER AGREEMENTS.—The term 'swap' shall
13 be construed to include a master agreement
14 that provides for an agreement, contract, or
15 transaction that is a swap pursuant to subpara-
16 graph (A), together with all supplements to any
17 such master agreement, without regard to
18 whether the master agreement contains an
19 agreement, contract, or transaction that is not
20 a swap pursuant to subparagraph (A), except
21 that the master agreement shall be considered
22 to be a swap only with respect to each agree-
23 ment, contract, or transaction under the master
24 agreement that is a swap pursuant to subpara-
25 graph (A).

1 "(36) SECURITY-BASED SWAP.—

2 "(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term 'security-based
4 swap' means any agreement, contract, or trans-
5 action that would be a swap under paragraph
6 (35) (without regard to paragraph
7 (35)(B)(xii)), and that—

8 "(i) is based on an index that is a
9 narrow-based security index, including any
10 interest therein or based on the value
11 thereof;

12 "(ii) is based on a single security or
13 loan, including any interest therein or
14 based on the value thereof; or

15 "(iii) is based on the occurrence, non-
16 occurrence, or extent of the occurrence of
17 an event relating to a single issuer of a se-
18 curity or the issuers of securities in a nar-
19 row-based security index, provided that
20 such event must directly affect the finan-
21 cial statements, financial condition, or fi-
22 nancial obligations of the issuer.

23 "(B) EXCLUSION.—The term 'security-
24 based swap' does not include any agreement,
25 contract, or transaction that meets the defini-

1 tion of security-based swap only because it ref-
2 erences or is based upon a government security.
3 "(C) MIXED SWAP.—The term 'security-
4 based swap' includes any agreement, contract,
5 or transaction that is as described in subpara-
6 graph (A) and also is based on the value of one
7 or more interest or other rates, currencies, com-
8 modities, instruments of indebtedness, indices,
9 quantitative measures, other financial or eco-
10 nomic interest or property of any kind (other
11 than a single security or a narrow-based secu-
12 rity index), or the occurrence, non-occurrence,
13 or the extent of the occurrence of an event or
14 contingency associated with a potential finan-
15 cial, economic, or commercial consequence
16 (other than an event described in subparagraph
17 (A)(iii)).
18 "(D) RULE OF CONSTRUCTION REGARDING
19 MASTER AGREEMENTS.—The term 'security-
20 based swap' shall be construed to include a
21 master agreement that provides for an agree-
22 ment, contract, or transaction that is a secu-
23 rity-based swap pursuant to subparagraph (A),
24 together with all supplements to any such mas-
25 ter agreement, without regard to whether the

1 master agreement contains an agreement, con-
2 tract, or transaction that is not a security-based
3 swap pursuant to subparagraph (A), except
4 that the master agreement shall be considered
5 to be a security-based swap only with respect to
6 each agreement, contract, or transaction under
7 the master agreement that is a security-based
8 swap pursuant to subparagraph (A).
9 "(37) SWAP DEALER.—
10 "(A) IN GENERAL.—The term 'swap deal-
11 er' means any person engaged in the business
12 of buying and selling swaps for such person's
13 own account, through a broker or otherwise,
14 that is regulated by a Prudential Regulator.
15 "(B) EXCEPTION.—The term 'swap dealer'
16 does not include a person that buys or sells
17 swaps for such person's own account, either in-
18 dividually or in a fiduciary capacity, but not as
19 a part of a regular business.
20 "(38) SECURITY-BASED SWAP DEALER.—
21 "(A) IN GENERAL.—The term 'security-
22 based swap dealer' means any person engaged
23 in the business of buying and selling security-
24 based swaps for such person's own account,

1 through a broker or otherwise, that is regulated
2 by a Prudential Regulator.
3 "(B) EXCEPTION.—The term 'security-
4 based swap dealer' does not include a person
5 that buys or sells security-based swaps for such
6 person's own account, either individually or in
7 a fiduciary capacity, but not as a part of a reg-
8 ular business.
9 "(39) MAJOR SWAP PARTICIPANT.—
10 "(A) IN GENERAL.—The term 'major swap
11 participant' means any person who is not a
12 swap dealer, who maintains a substantial net
13 position in outstanding swaps, excluding posi-
14 tions held primarily for hedging (including bal-
15 ance sheet hedging) or risk management pur-
16 poses, and who is regulated by a Prudential
17 Regulator. A person may be designated as a
18 major swap participant for 1 or more individual
19 types of swaps.
20 "(B) DEFINITION OF 'SUBSTANTIAL NET
21 POSITION'.— The Commission and the Securi-
22 ties and Exchange Commission shall jointly de-
23 fine by rule or regulation the term 'substantial
24 net position' at a threshold that the regulators
25 determine prudent for the effective monitoring,

1 management and oversight of the financial sys-
2 tem.
3 "(40) MAJOR SECURITY-BASED SWAP PARTICI-
4 PANT.—
5 "(A) IN GENERAL.—The term 'major secu-
6 rity-based swap participant' means any person
7 who is not a security-based swap dealer, who
8 maintains a substantial net position in out-
9 standing security-based swaps, excluding posi-
10 tions held primarily for commercial hedging (in-
11 cluding balance sheet hedging) or financial risk
12 management purposes, and who is regulated by
13 a Prudential Regulator. A person may be des-
14 ignated as a major security-based swap partici-
15 pant for 1 or more individual types of security-
16 based swaps.
17 "(B) DEFINITION OF 'SUBSTANTIAL NET
18 POSITION'.—The Commission and the Securi-
19 ties and Exchange Commission shall jointly de-
20 fine by rule or regulation the term 'substantial
21 net position' at a threshold that the regulators
22 determine prudent for the effective monitoring,
23 management and oversight of the financial sys-
24 tem.

1 "(41) APPROPRIATE FEDERAL BANKING AGEN-
2 CY.—The term 'appropriate Federal banking agency'
3 has the same meaning as in section 3(q) of the Fed-
4 eral Deposit Insurance Act (12 U.S.C. 1813(q)).
5 "(42) BOARD.—The term 'Board' means the
6 Board of Governors of the Federal Reserve System.
7 "(43) PRUDENTIAL REGULATOR.—The term
8 'Prudential Regulator' means—
9 "(A) the Board, in the case of a swap deal-
10 er, major swap participant, security-based swap
11 dealer or major security-based swap participant
12 that is—
13 "(i) a State-chartered bank that is a
14 member of the Federal Reserve System;
15 "(ii) a State-chartered branch or
16 agency of a foreign bank; or
17 "(iii) a bank holding company (as de-
18 fined in section 2 of the Bank Holding
19 Company Act of 1956);
20 "(B) the Office of the Comptroller of the
21 Currency, in the case of a swap dealer, major
22 swap participant, security-based swap dealer or
23 major security-based swap participant that is—
24 "(i) a national bank; or

1 "(ii) a federally chartered branch or
2 agency of a foreign bank;
3 "(C) the Federal Deposit Insurance Cor-
4 poration, in the case of a swap dealer, major
5 swap participant, security-based swap dealer or
6 major security-based swap participant that is a
7 State-chartered bank that is not a member of
8 the Federal Reserve System; or
9 "(D) the Office of Thrift Supervision, in
10 the case of a savings association (as defined in
11 section 2 of the Home Owners' Loan Act) or a
12 savings and loan holding company (as defined
13 in section 10 of such Act).
14 "(44) SWAP REPOSITORY.—The term 'swap re-
15 pository' means an entity that collects and maintains
16 the records of the terms and conditions of swaps or
17 security-based swaps entered into by third parties.".
18 **SEC. 4101. SWAP REPOSITORIES.**
19 (a) SWAP REPOSITORIES.—The Commodity Ex-
20 change Act (7 U.S.C. 1 et seq.) is amended by inserting
21 after section 20 the following:
22 **"SEC. 21. SWAP REPOSITORIES.**
23 "(a) REQUIRED REPORTING.—
24 "(1) IN GENERAL.—

1 "(A) IN GENERAL.—Any swap that is not
2 accepted for clearing by a derivatives clearing
3 organization shall be reported to either a swap
4 repository registered pursuant to subsection (b)
5 or, if there is no repository that would accept
6 the swap, to the Commission in accordance with
7 section 4r within such time period as the Com-
8 mission may by rule prescribe.
9 "(B) AUTHORITY OF SWAP DEALER TO RE-
10 PORT.—Counterparties to a swap may agree as
11 to which counterparty will report such swap as
12 required by subparagraph (A). In any swap
13 where only one counterparty is a swap dealer,
14 the swap dealer shall report the swap.
15 "(2) TRANSITION RULES.—Rules adopted by
16 the Commission under this section shall provide for
17 the reporting of data, as follows:
18 "(A) Swaps that were entered into before
19 the date of enactment of the Over-the-Counter
20 Derivatives Markets Act of 2009 shall be re-
21 ported to a registered swap repository or the
22 Commission no later than 270 days after the
23 effective date of such Act.
24 "(B) Swaps that were entered into on or
25 after the date of enactment of the Over-the-

1 Counter Derivatives Markets Act of 2009 shall
2 be reported to a registered swap repository or
3 the Commission no later than the later of—
4 "(i) 180 days after the effective date
5 of such Act; or
6 "(ii) such other time after entering
7 into the swap as the Commission may pre-
8 scribe by rule or regulation.
9 "(b) SWAP REPOSITORIES.—
10 "(1) REGISTRATION REQUIREMENT.—
11 "(A) IN GENERAL.—It shall be unlawful
12 for a swap repository, unless registered with the
13 Commission, directly or indirectly to make use
14 of the mails or any means or instrumentality of
15 interstate commerce to perform the functions of
16 a swap repository.
17 "(B) INSPECTION AND EXAMINATION.—
18 Registered swap repositories shall be subject to
19 inspection and examination by any representa-
20 tives of the Commission.
21 "(2) STANDARD SETTING.—
22 "(A) DATA IDENTIFICATION.—The Com-
23 mission shall prescribe standards that specify
24 the data elements for each swap that shall be

1 collected and maintained by each swap reposi-
2 tory.
3 "(B) DATA COLLECTION AND MAINTE-
4 NANCE.—The Commission shall prescribe data
5 collection and data maintenance standards for
6 swap repositories.
7 "(C) COMPARABILITY.—The standards
8 prescribed by the Commission under this sub-
9 section shall be comparable to the data stand-
10 ards imposed by the Commission on derivatives
11 clearing organizations that clear swaps.
12 "(3) DUTIES.—A swap repository shall—
13 "(A) accept data prescribed by the Com-
14 mission for each swap under paragraph (2);
15 "(B) maintain such data in such form and
16 manner and for such period as may be required
17 by the Commission;
18 "(C) provide to the Commission, or its des-
19 ignee, such information as is required by, and
20 in a form and at a frequency to be determined
21 by, the Commission, in order to comply with the
22 public reporting requirements contained in sec-
23 tion 8(j); and
24 "(D) make available, on a confidential
25 basis, all data obtained by the swap repository,

1 including individual counterparty trade and po-
2 sition data, to the Commission, the appropriate
3 Federal banking agencies, the Commodity Fu-
4 tures Trading Commission, the Financial Serv-
5 ices Oversight Council, and the Department of
6 Justice or to other persons the Commission
7 deems appropriate, including foreign financial
8 supervisors (including foreign futures authori-
9 ties), foreign central banks, and foreign min-
10 istries.

11 "(4) REQUIRED REGISTRATION FOR SWAP RE-
12 POSITORIES.—Any person that is required to be reg-
13 istered as a swap repository under this subsection
14 shall register with the Commission, regardless of
15 whether that person also is registered with the Secu-
16 rities and Exchange Commission as a security-based
17 swap repository.

18 "(5) HARMONIZATION OF RULES.—Not later
19 than 270 days after the date of enactment of the
20 Over-the-Counter Derivatives Markets Act of 2009,
21 the Commission and the Securities and Exchange
22 Commission shall jointly adopt uniform rules gov-
23 erning persons that are registered under this section
24 and persons that are registered as security-based
25 swap repositories under the Securities Exchange Act

1 of 1934 (15 U.S.C. 78a et seq.), including uniform
2 rules that specify the data elements that shall be col-
3 lected and maintained by each repository.
4 "(6) EXEMPTIONS.—The Commission may ex-
5 empt, conditionally or unconditionally, a swap repos-
6 itory from the requirements of this section if the
7 Commission finds that such swap repository is sub-
8 ject to comparable, comprehensive supervision or
9 regulation on a consolidated basis by the Securities
10 and Exchange Commission, a Prudential Regulator
11 or the appropriate governmental authorities in the
12 organization's home country, or as necessary or ap-
13 propriate in the public interest and consistent with
14 the purposes of this Act.".
15 (b) REPORTING AND RECORDKEEPING.—The Com-
16 modity Exchange Act (7 U.S.C. 1 et seq.) is amended by
17 inserting after section 4q the following:
18 **"SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN**
19 **SWAPS.**
20 "(a) IN GENERAL.—Any person who enters into a
21 swap that is not accepted for clearing by a derivatives
22 clearing organization and is not reported to a swap reposi-
23 tory registered pursuant to section 21 shall meet the re-
24 quirements in subsection (b).

1 "(b) REPORTS.—Any person described in subsection
2 (a) shall—
3 "(1) make such reports in such form and man-
4 ner and for such period as the Commission shall pre-
5 scribe by rule or regulation regarding the swaps held
6 by the person; and
7 "(2) keep books and records pertaining to the
8 security-based swaps held by the person in such
9 form and manner and for such period as may be re-
10 quired by the Commission, which books and records
11 shall be open to inspection by any representative of
12 the Commission, an appropriate Federal banking
13 agency, the Securities and Exchange Commission,
14 the Financial Services Oversight Council, and the
15 Department of Justice.
16 "(c) IDENTICAL DATA.—In adopting rules under this
17 section, the Commission shall require persons described in
18 subsection (a) to report the same or more comprehensive
19 data than the Commission requires repositories to col-
20 lect.".
21 (c) PUBLIC REPORTING OF AGGREGATE SWAP
22 DATA.—Section 8 of such Act (7 U.S.C. 12) is amended
23 by adding at the end the following:
24 "(j) PUBLIC REPORTING OF AGGREGATE SWAP
25 DATA.—

1 "(1) IN GENERAL.—The Commission, or a per-
2 son designated by the Commission pursuant to para-
3 graph (2), shall make available to the public, in a
4 manner that does not disclose the business trans-
5 actions and market positions of any person, aggre-
6 gate data on swap trading volumes and positions
7 from the sources set forth in paragraph (3).
8 "(2) DESIGNEE OF THE COMMISSION.—The
9 Commission may designate a derivatives clearing or-
10 ganization or a swap repository to carry out the
11 public reporting described in paragraph (1).
12 "(3) SOURCES OF INFORMATION.—The sources
13 of the information to be publicly reported as de-
14 scribed in paragraph (1) are—
15 "(A) derivatives clearing organizations;
16 "(B) swap repositories pursuant to section
17 21(c)(3); and
18 "(C) reports received by the Commission
19 pursuant to section 4r.".

20 **SEC. 4102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS**
21 **AND MAJOR SWAP PARTICIPANTS.**

22 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
23 is amended by inserting after section 4r (as added by sec-
24 tion 4101(b) of this title) the following:

1 **"SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS**
2 **DEALERS AND CERTAIN MAJOR SWAP PAR-**
3 **TICIPANTS.**

4 "Each Prudential Regulator shall impose both initial
5 and variation margin requirements on all swaps between
6 swap dealers and major swap participants subject to regu-
7 lation by the Regulator, that are not cleared by a deriva-
8 tives clearing organization.".

9 **SEC. 4103. SEGREGATION OF ASSETS HELD AS COLLAT-**
10 **ERAL IN SWAP TRANSACTIONS.**

11 The Commodity Exchange Act (7 U.S.C. 1 et seq.)
12 is amended by inserting after section 4s (as added by sec-
13 tion 4102 of this title) the following:

14 **"SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL**
15 **IN SWAP TRANSACTIONS.**

16 "(a) CLEARED SWAPS.—A swap dealer, futures com-
17 mission merchant, or derivatives clearing organization by
18 or through which funds or other property are held as mar-
19 gin or collateral to secure the obligations of a counterparty
20 under a swap to be cleared by or through a derivatives
21 clearing organization shall segregate, maintain, and use
22 the funds or other property for the benefit of the
23 counterparty, in accordance with such rules and relations
24 as the Commission or Prudential Regulator shall pre-
25 scribe. Any such funds or other property shall be treated
26 as customer property under this Act.

1 "(b) OVER-THE-COUNTER SWAPS.—At the request of
2 a swap counterparty who provides funds or other property
3 to a swap dealer as margin or collateral to secure the obli-
4 gations of the counterparty under a swap entered into
5 using the mails or any other means or instrumentalities
6 of interstate commerce between the counterparty and the
7 swap dealer that is not submitted for clearing to a deriva-
8 tives clearing organization, the swap dealer shall segregate
9 the funds or other property for the benefit of the
10 counterparty, and maintain the funds or other property
11 in an account which is carried by a third-party custodian
12 and designated as a segregated account for the
13 counterparty, in accordance with such rules and regula-
14 tions as the Commission or Prudential Regulator may pre-
15 scribe. Any such funds and property may, with the agree-
16 ment of the customer, be commingled with the funds and
17 property of other swap counterparties and customers and
18 shall be eligible for treatment as customer property under
19 this Act. This subsection shall not be interpreted to pre-
20 clude commercial arrangements regarding the investment
21 of the segregated funds or other property and the related
22 allocation of gains and losses resulting from any such in-
23 vestment or regarding the allocation of the costs of seg-
24 regation.

1 "(c) MARK-TO-MARKET MARGIN.—Nothing in this
2 section shall be construed to obligate any person to seg-
3 regate variation or mark-to-market margin.".

4 Subtitle B—Amendments to the
5 Securities Exchange Act of 1934

6 **SEC. 4201. DEFINITIONS.**

7 Section 3(a) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78c(a)) is amended by adding at the end the
9 following:

10 "(65) APPROPRIATE FEDERAL BANKING AGEN-
11 CY.—The term 'appropriate Federal banking agency'
12 has the same meaning as in section 3(q) of the Fed-
13 eral Deposit Insurance Act (12 U.S.C. 1813(q)).

14 "(66) MAJOR SWAP PARTICIPANT.—The term
15 'major swap participant' has the same meaning as in
16 section 1a(40) of the Commodity Exchange Act (7
17 U.S.C. 1a(40)).

18 "(67) MAJOR SECURITY-BASED SWAP PARTICI-
19 PANT.—The term 'major security-based swap partic-
20 ipant' has the same meaning as in section 1a(41) of
21 the Commodity Exchange Act (7 U.S.C. 1a(41)).

22 "(68) PRUDENTIAL REGULATOR.—The term
23 'Prudential Regulator' has the same meaning as in
24 section 1a(43) of the Commodity Exchange Act (7
25 U.S.C. 1a(43)).

1 "(69) SWAP.—The term 'swap' has the same
2 meaning as in section 1a(35) of the Commodity Ex-
3 change Act (7 U.S.C. 1a(35)).
4 "(70) SWAP DEALER.—The term 'swap dealer'
5 has the same meaning as in section 1a(39) of the
6 Commodity Exchange Act (7 U.S.C. 1a(39)).
7 "(71) SECURITY-BASED SWAP.—The term 'se-
8 curity-based swap' has the same meaning as in sec-
9 tion 1a(38) of the Commodity Exchange Act (7
10 U.S.C. 1a(38)).
11 "(72) SECURITY-BASED SWAP DEALER.—The
12 term 'security-based swap dealer' has the same
13 meaning as in section 1a(44) of the Commodity Ex-
14 change Act (7 U.S.C. 1a(44)).".
15 **SEC. 4202. SWAP REPOSITORIES.**
16 (a) IN GENERAL.—The Securities Exchange Act of
17 1934 (15 U.S.C. 78a, et seq.) is amended by adding the
18 following section after section 3A:
19 **"SEC. 3B. SWAP REPOSITORIES.**
20 "(a) REQUIRED REPORTING.—
21 "(1) IN GENERAL.—
22 "(A) IN GENERAL.—Any security-based
23 swap that is not accepted for clearing by any
24 clearing agency shall be reported to either a se-
25 curity-based swap repository registered pursu-

1 ant to subsection (b) or, if there is no reposi-
2 tory that would accept the security-based swap,
3 to the Commission in accordance with section
4 13A within such time period as the Commission
5 may by rule prescribe.
6 "(B) AUTHORITY OF SWAP DEALER TO RE-
7 PORT.—Counterparties to a security-based swap
8 may agree as to which counterparty will report
9 such swap as required by subparagraph (A). In
10 any security-based swap where only one
11 counterparty is a swap dealer, the swap dealer
12 shall report the swap.
13 "(2) TRANSITION RULES.—Rules adopted by
14 the Commission under this section shall provide for
15 the reporting of data, as follows:
16 "(A) Security-based swaps that were en-
17 tered into before the date of enactment of the
18 Over-the-Counter Derivatives Markets Act of
19 2009 shall be reported to a registered security-
20 based swap repository or the Commission no
21 later than 270 days after the effective date of
22 such Act.
23 "(B) Security-based swaps that were en-
24 tered into on or after the date of enactment of
25 the Over-the-Counter Derivatives Markets Act

1 of 2009 shall be reported to a registered secu-
2 rity-based swap repository or the Commission
3 no later than the later of—
4 "(i) 180 days after the effective date
5 of such Act; or
6 "(ii) such other time after entering
7 into the swap as the Commission may pre-
8 scribe by rule or regulation.
9 "(b) SECURITY-BASED SWAP REPOSITORIES.—
10 "(1) REGISTRATION REQUIREMENT.—
11 "(A) IN GENERAL.—It shall be unlawful
12 for a security-based swap repository, unless reg-
13 istered with the Commission, directly or indi-
14 rectly to make use of the mails or any means
15 or instrumentality of interstate commerce to
16 perform the functions of a security-based swap
17 repository.
18 "(B) INSPECTION AND EXAMINATION.—
19 Registered security-based swap repositories
20 shall be subject to inspection and examination
21 by any representatives of the Commission.
22 "(2) STANDARD SETTING.—
23 "(A) DATA IDENTIFICATION.—The Com-
24 mission shall prescribe standards that specify
25 the data elements for each security-based swap

1 that shall be collected and maintained by each
2 security-based swap repository.
3 "(B) DATA COLLECTION AND MAINTE-
4 NANCE.—The Commission shall prescribe data
5 collection and data maintenance standards for
6 security-based swap repositories.
7 "(C) COMPARABILITY.—The standards
8 prescribed by the Commission under this sub-
9 section shall be comparable to the data stand-
10 ards imposed by the Commission on clearing
11 agencies that clear security-based swaps.
12 "(3) DUTIES.—A security-based swap reposi-
13 tory shall—
14 "(A) accept data prescribed by the Com-
15 mission for each security-based swap under this
16 paragraph (2);
17 "(B) maintain such data in such form and
18 manner and for such period as may be required
19 by the Commission;
20 "(C) provide to the Commission, or its des-
21 ignee, such information as is required by, and
22 in a form and at a frequency to be determined
23 by, the Commission, in order to comply with the
24 public reporting requirements contained in sec-
25 tion 13(m); and

1 "(D) make available, on a confidential
2 basis, all data obtained by the security-based
3 swap repository, including individual
4 counterparty trade and position data, to the
5 Commission, the appropriate Federal banking
6 agencies, the Commodity Futures Trading
7 Commission, the Financial Services Oversight
8 Council, and the Department of Justice or to
9 other persons the Commission deems appro-
10 priate, including foreign financial supervisors
11 (including foreign futures authorities), foreign
12 central banks, and foreign ministries.
13 "(4) REQUIRED REGISTRATION FOR SECURITY-
14 BASED SWAP REPOSITORIES.—Any person that is re-
15 quired to be registered as a securities-based swap re-
16 pository under this subsection shall register with the
17 Commission, regardless of whether that person also
18 is registered with the Commodity Futures Trading
19 Commission as a swap repository.
20 "(5) HARMONIZATION OF RULES.—Not later
21 than 270 days after the date of enactment of the
22 Over-the-Counter Derivatives Markets Act of 2009,
23 the Commission and the Commodity Futures Trad-
24 ing Commission shall jointly adopt uniform rules
25 governing persons that are registered under this sec-

1 tion and persons that are registered as swap reposi-
2 tories under the Commodity Exchange Act (7 U.S.C.
3 1, et seq.), including uniform rules that specify the
4 data elements that shall be collected and maintained
5 by each repository.

6 "(6) EXEMPTIONS.—The Commission may ex-
7 empt, conditionally or unconditionally, a security-
8 based swap repository from the requirements of this
9 section if the Commission finds that such security-
10 based swap repository is subject to comparable, com-
11 prehensive supervision or regulation on a consoli-
12 dated basis by the Commodity Futures Trading
13 Commission, a Prudential Regulator or the appro-
14 priate governmental authorities in the organization's
15 home country, or as necessary or appropriate in the
16 public interest and consistent with the purposes of
17 this Act.".

18 (b) REPORTING AND RECORDKEEPING.—The Securi-
19 ties Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is
20 amended by inserting after section 13 the following sec-
21 tion:

22 **"SEC. 13A. REPORTING AND RECORDKEEPING FOR CER-**
23 **TAIN SECURITY-BASED SWAPS.**

24 "(a) IN GENERAL.—Any person who enters into a se-
25 curity-based swap that is not accepted for clearing by any

1 clearing agency and is not reported to a security-based
2 swap repository registered pursuant to section 3B(b) shall
3 meet the requirements in subsection (b).

4 "(b) REPORTS.—Any person described in subsection
5 (a) shall—

6 "(1) make such reports in such form and man-
7 ner and for such period as the Commission shall pre-
8 scribe by rule or regulation regarding the security-
9 based swaps held by the person; and

10 "(2) keep books and records pertaining to the
11 security-based swaps held by the person in such
12 form and manner and for such period as may be re-
13 quired by the Commission, which books and records
14 shall be open to inspection by any representative of
15 the Commission, an appropriate Federal banking
16 agency, the Commodity Futures Trading Commis-
17 sion, the Financial Services Oversight Council, and
18 the Department of Justice.

19 "(c) IDENTICAL DATA.—In adopting rules under this
20 section, the Commission shall require persons described in
21 subsection (a) to report the same or more comprehensive
22 data than the Commission requires security-based swap
23 repositories to collect.".

24 (c) PUBLIC REPORTING AND REPOSITORIES FOR SE-
25 CURITY-BASED SWAP AGREEMENTS.—Section 13 of the

1 Securities Exchange Act of 1934 (15 U.S.C. 78m) is
2 amended by adding at the end the following:
3 "(m) PUBLIC REPORTING OF AGGREGATE SECURITY-
4 BASED SWAP DATA.—
5 "(1) IN GENERAL.—The Commission, or a per-
6 son designated by the Commission pursuant to para-
7 graph (2), shall make available to the public, in a
8 manner that does not disclose the business trans-
9 actions and market positions of any person, aggre-
10 gate data on security-based swap trading volumes
11 and positions from the sources set forth in para-
12 graph (3).
13 "(2) DESIGNEE OF THE COMMISSION.—The
14 Commission may designate a clearing agency or a
15 security-based swap repository to carry out the pub-
16 lic reporting described in paragraph (1).
17 "(3) SOURCES OF INFORMATION.—The sources
18 of the information to be publicly reported as de-
19 scribed in paragraph (1) are—
20 "(A) clearing agencies;
21 "(B) security-based swap repositories reg-
22 istered pursuant to section 3B(b); and
23 "(C) reports received by the Commission
24 pursuant to section 13A.".

1 **SEC. 4203. MARGIN REQUIREMENTS.**

2 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
3 et seq.) is amended by adding the following section after
4 section 3B:

5 **"SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED**
6 **SWAP DEALERS AND MAJOR SECURITY-**
7 **BASED SWAP PARTICIPANTS.**

8 "Each Prudential Regulator shall impose both initial
9 and variation margin requirements on all security-based
10 swaps between security-based swap dealers and major se-
11 curity-based swap participants subject to regulation by the
12 Regulator, that are not cleared by a clearing agency.".

13 **SEC. 4204. SEGREGATION OF ASSETS HELD AS COLLAT-**
14 **ERAL IN SWAP TRANSACTIONS.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a,
16 et seq.) is further amended by adding after section 3C (as
17 added by section 4203) the following:

18 **"SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL**
19 **IN SWAP TRANSACTIONS.**

20 "(a) CLEARED SWAPS.—A security-based swap deal-
21 er or clearing agency by or through which funds or other
22 property are held as margin or collateral to secure the obli-
23 gations of a counterparty under a security-based swap to
24 be cleared by or through a derivatives clearing agency
25 shall segregate, maintain, and use the funds or other prop-
26 erty for the benefit of the counterparty, in accordance with

1 such rules and regulations as the Commission or Pruden-
2 tial Regulator shall prescribe. Any such funds or other
3 property shall be treated as customer property under this
4 Act.

5 "(b) OVER-THE-COUNTER SWAPS.—At the request of
6 a counterparty to a security-based swap who provides
7 funds or other property to a swap dealer as margin or
8 collateral to secure the obligations of the counterparty
9 under a security-based swap entered into using the mails
10 or any other means or instrumentalities of interstate com-
11 merce between the counterparty and the swap dealer that
12 is not submitted for clearing to a derivatives clearing agen-
13 cy, the swap dealer shall segregate the funds or other
14 property for the benefit of the counterparty, and maintain
15 the funds or other property in an account which is carried
16 by a third-party custodian and designated as a segregated
17 account for the counterparty, in accordance with such
18 rules and regulations as the Commission or Prudential
19 Regulator may prescribe. This subsection shall not be in-
20 terpreted to preclude commercial arrangements regarding
21 the investment of the segregated funds or other property
22 and the related allocation of gains and losses resulting
23 from any such investment or regarding the allocation of
24 the costs of segregation.

1 "(c) MARK-TO-MARKET MARGIN.—Nothing in this
2 section shall be construed to obligate any person to seg-
3 regate variation or mark-to-market margin.".

4 Subtitle C—Common Provisions

5 **SEC. 4301. REPORT TO THE CONGRESS.**

6 Within 1 year after the date of the enactment of this
7 title, and not less frequently than annually thereafter, the
8 Commodity Futures Trading Commission, the Securities
9 and Exchange Commission, and the Prudential Regulators
10 shall review data from swap repositories, security-based
11 swap repositories, derivative clearing organizations, and
12 clearing agencies, and if the Commodity Futures Trading
13 Commission, the Securities and Exchange Commission,
14 and the Prudential Regulators jointly find that the activi-
15 ties of swaps dealers, securities-based swaps dealers,
16 major swap participants, or major security-based swap
17 participants not subject to regulation by the Commodity
18 Futures Trading Commission, the Securities and Ex-
19 change Commission, or a Prudential Regulator, in relation
20 to swaps or security-based swaps that are not submitted
21 to a derivatives clearing organization or clearing agency
22 for clearing, have become so substantial or imprudent as
23 to potentially threaten the stability of financial markets
24 or the economy, the Commodity Futures Trading Commis-
25 sion, the Securities and Exchange Commission, and the

1 Prudential Regulators shall jointly submit to the Congress
2 a report on the situation, including recommendations as
3 to whether the activities should be subject to further regu-
4 lation.

5 **SEC. 4302. CAPITAL REQUIREMENTS.**

6 Each Prudential Regulator shall take into account
7 the swaps and security-based swaps activities of the enti-
8 ties subject to regulation by the Regulator in establishing
9 capital requirements for the entities.

10 **SEC. 4303. CENTRALIZED CLEARING.**

11 (a) IN GENERAL.—The Board, in consultation and
12 coordination with the Securities and Exchange Commis-
13 sion and the Commodity Futures Trading Commission,
14 shall implement policies and procedures designed to in-
15 crease the use of central counterparties for clearing of
16 over-the-counter swaps transactions by swap dealers, secu-
17 rity-based swap dealers, major swap participants, and
18 major security-based swap participants, with the goal of
19 significantly reducing the risk profile of the market in
20 which the transactions occur.

21 (b) FIRM TARGETS.—

22 (1) IN GENERAL.—Pursuant to subsection (a),
23 the Board shall establish the following firm goals for
24 swap dealers, security-based swap dealers, major
25 swap participants, and major security-based swap

1 participants, with respect to the clearing of certain
2 swaps:
3 (A) INTEREST RATE SWAPS.—In the case
4 of interest rate swaps, each swap dealer, secu-
5 rity-based swap dealer, major swap participant,
6 and major security-based swap participant shall
7 commit to a goal, beginning December 2009, of
8 submitting for clearing to a derivatives clearing
9 organization or clearing agency—
10 (i) 90 percent of new eligible trades
11 (calculated on a notional basis);
12 (ii) 70 percent of new eligible trades
13 (calculated on a weighted average notional
14 basis); and
15 (iii) 60 percent of historical eligible
16 trades (calculated on a weighted average
17 notional basis).
18 (B) CREDIT DEFAULT SWAPS.—In the case
19 of credit default swaps, each swap dealer, secu-
20 rity-based swap dealer, major swap participant,
21 and major security-based swap participant shall
22 commit to a goal, beginning December 2009, of
23 submitting for clearing to a derivatives clearing
24 organization or clearing agency—

1 (i) 95 percent of new eligible trades
2 (calculated on a notional basis); and
3 (ii) 80 percent of all eligible trades
4 (calculated on a weighted average notional
5 basis).
6 (2) DEFINITIONS.—In paragraph (1):
7 (A) ELIGIBLE TRADE.—The term "eligible
8 trade" means a trade on an eligible product be-
9 tween counterparties each of whom—
10 (i) is a swap dealer, security-based
11 swap dealer, major swap participant, or
12 major security-based swap participant; and
13 (ii) has a clearing relationship in place
14 with 1 or more common derivative clearing
15 organizations or clearing agencies) for the
16 eligible product.
17 (B) ELIGIBLE PRODUCT.—The term "eligi-
18 ble product" means a product eligible for clear-
19 ing by a derivative clearing organization or
20 clearing agency.
21 (c) OTHER CONTRACTS AND COUNTERPARTIES.—
22 The Board, in consultation with the Securities and Ex-
23 change Commission and the Commodity Futures Trading
24 Commission, shall actively engage central counterparties
25 and regulators globally to—

1 (1) broaden the set of derivative products eligi-
2 ble for clearing by swap dealers, security-based swap
3 dealers, major swap participants, and major secu-
4 rity-based swap participants, taking into account
5 risk, liquidity, default management and other proc-
6 esses; and
7 (2) expand the set of counterparties eligible to
8 clear at each eligible central counterparty taking
9 into account appropriate counterparty risk manage-
10 ment considerations, including the development of
11 buy-side clearing.

12 **SEC. 4304. DEFINITIONS.**

13 The terms used in this subtitle shall have the mean-
14 ings given the terms in section 1a of the Commodity Ex-
15 change Act.

16 TITLE V—CORPORATE AND FI-
17 NANCIAL INSTITUTION COM-
18 PENSATION FAIRNESS

19 **SEC. 5001. SHORT TITLE.**

20 This title may be cited as the "Corporate and Finan-
21 cial Institution Compensation Fairness Act of 2009".

22 **SEC. 5002. SHAREHOLDER VOTE ON EXECUTIVE COM-**
23 **PENSATION.**

24 (a) AMENDMENT TO THE SECURITIES EXCHANGE
25 ACT OF 1934.—Section 14 of the Securities Exchange Act

1 of 1934 (15 U.S.C. 78n) is amended by adding at the end
2 the following new subsection:
3 "(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON
4 EXECUTIVE COMPENSATION.—
5 "(1) IN GENERAL.—A proxy or consent or au-
6 thorization for an annual meeting of the share-
7 holders (or a special meeting in lieu of the annual
8 meeting) occurring on or after the date that is 6
9 months after the date on which final rules are issued
10 under paragraph (4), shall provide for a separate
11 shareholder advisory vote, at least once every three
12 years, to approve the registrant's executive com-
13 pensation policies and practices as set forth pursu-
14 ant to the Commission's disclosure rules. The share-
15 holder vote shall be advisory in nature and shall not
16 be binding on the issuer or its board of directors and
17 shall not be construed as overruling a decision by
18 such board, nor to create or imply any additional fi-
19 duciary duty by such board, nor shall such vote be
20 construed to restrict or limit the ability of share-
21 holders to make proposals for inclusion in proxy ma-
22 terials related to executive compensation for meet-
23 ings of shareholders at which such an advisory vote
24 on executive compensation is not to be conducted.

1 "(2) OPT OUT.—If not less than ⅔ of votes
2 cast at a meeting of shareholders on a proposal to
3 opt out of the triennial shareholder advisory vote on
4 executive compensation required under paragraph
5 (1) are cast in favor of such a proposal, then such
6 shareholder advisory vote required under such para-
7 graph shall not be required to take place for a pe-
8 riod of 5 years following the vote approving such
9 proposal.

10 "(3) SHAREHOLDER APPROVAL OF GOLDEN
11 PARACHUTE COMPENSATION.—

12 "(A) DISCLOSURE.—In any proxy or con-
13 sent solicitation material for an annual meeting
14 of the shareholders (or a special meeting in lieu
15 of the annual meeting) occurring on or after
16 the date that is 6 months after the date on
17 which final rules are issued under paragraph
18 (4), that concerns an acquisition, merger, con-
19 solidations, or proposed sale or other disposition
20 of all or substantially all the assets of an issuer,
21 the person making such solicitation shall dis-
22 close in the proxy or consent solicitation mate-
23 rial, in a clear and simple tabular form in ac-
24 cordance with regulations to be promulgated by
25 the Commission, any agreements or under-

1 standings that such person has with the named
2 executive officers (as such term is defined in
3 the rules promulgated by the Commission) of
4 such issuer (or of the acquiring issuer, if such
5 issuer is not the acquiring issuer) concerning
6 any type of compensation (whether present, de-
7 ferred, or contingent) that is based on or other-
8 wise relates to the acquisition, merger, consoli-
9 dation, sale, or other dispositions of all or sub-
10 stantially all of the assets of the issuer, and the
11 aggregate total of all such compensation that
12 may (and the conditions upon which it may) be
13 paid or become payable to or on behalf of such
14 named executive officer.
15 "(B) SHAREHOLDER APPROVAL.—Any
16 proxy or consent or authorization relating to
17 the proxy or consent solicitation material con-
18 taining the disclosure required by subparagraph
19 (A) shall provide for a separate shareholder
20 vote to approve such agreements or under-
21 standings and compensation as disclosed. A
22 vote by the shareholders shall not be binding on
23 the corporation or the board of directors of the
24 issuer or the person making the solicitation and
25 shall not be construed as overruling a decision

1 by such board, nor to create or imply any addi-
2 tional fiduciary duty by such board."
3 "(4) RULEMAKING.—Not later than 1 year
4 after the date of the enactment of the Corporate and
5 Financial Institution Compensation Fairness Act of
6 2009, the Commission shall issue rules and regula-
7 tions to implement this subsection.".
8 (b) STUDY AND REPORT.—The Securities and Ex-
9 change Commission shall conduct a study and review of
10 the results of shareholder advisory votes on executive com-
11 pensation held pursuant to this section and the effects of
12 such votes. Not later than 5 years after the date of enact-
13 ment of this title, the Securities and Exchange Commis-
14 sion shall submit a report to the Congress on the results
15 of the study and review required by this subsection.
16 **SEC. 5003. COMPENSATION COMMITTEE INDEPENDENCE.**
17 (a) STANDARDS RELATING TO COMPENSATION COM-
18 MITTEES.—The Securities Exchange Act of 1934 (15
19 U.S.C. 78f) is amended by inserting after section 10A the
20 following new section:
21 **"SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-**
22 **MITTEES.**
23 "(a) COMMISSION RULES.—
24 "(1) IN GENERAL.—Effective not later than
25 270 days after the date of enactment of the Cor-

1 porate and Financial Institution Compensation Fair-
2 ness Act of 2009, the Commission shall, by rule, di-
3 rect the national securities exchanges and national
4 securities associations to prohibit the listing of any
5 security of an issuer that is not in compliance with
6 the requirements of any portion of subsections (b)
7 through (f).

8 "(2) OPPORTUNITY TO CURE DEFECTS.—The
9 rules of the Commission under paragraph (1) shall
10 provide for appropriate procedures for an issuer to
11 have an opportunity to cure any defects that would
12 be the basis for a prohibition under paragraph (1)
13 before the imposition of such prohibition.

14 "(3) EXEMPTION AUTHORITY.—The Commis-
15 sion may exempt certain categories of issuers from
16 the requirements of subsections (b) through (f),
17 where appropriate in view of the purpose of this sec-
18 tion. In determining appropriate exemptions, the
19 Commission shall take into account, among other
20 considerations, the potential impact on smaller re-
21 porting issuers.

22 "(4) NO FEDERAL PREEMPTION.—If the law of
23 the State under which an issuer is incorporated pro-
24 vides for a procedure for the board of directors to
25 establish an independent compensation committee,

1 then such State law shall be controlling and nothing
2 in this section shall preempt such State law.
3 "(b) INDEPENDENCE OF COMPENSATION COMMIT-
4 TEES.—
5 "(1) IN GENERAL.—Each member of the com-
6 pensation committee of the board of directors of the
7 issuer shall be a member of the board of directors
8 of the issuer, and shall otherwise be independent.
9 "(2) CRITERIA.—The Commission shall, by
10 rule, establish the criteria for determining whether a
11 director is independent for purposes of this sub-
12 section. Such rules shall require that a member of
13 a compensation committee of an issuer may not,
14 other than in his or her capacity as a member of the
15 compensation committee, the board of directors, or
16 any other board committee—
17 "(A) accept any consulting, advisory, or
18 other compensatory fee from the issuer; or
19 "(B) be an affiliated person of the issuer
20 or any subsidiary thereof.
21 "(3) EXEMPTIVE AUTHORITY.—The Commis-
22 sion may exempt from the requirements of para-
23 graph (2) a particular relationship with respect to
24 compensation committee members, where appro-
25 priate in view of the purpose of this section.

1 "(4) DEFINITION.—As used in this section, the
2 term 'compensation committee' means—
3 "(A) a committee (or equivalent body) es-
4 tablished by and amongst the board of directors
5 of an issuer for the purpose of determining and
6 approving the compensation arrangements for
7 the executive officers of the issuer; and
8 "(B) if no such committee exists with re-
9 spect to an issuer, the independent members of
10 the entire board of directors.
11 "(c) INDEPENDENCE STANDARDS FOR COMPENSA-
12 TION CONSULTANTS AND OTHER COMMITTEE ADVI-
13 SORS.—The charter of the compensation committee of the
14 board of directors of an issuer shall set forth that any
15 outside compensation consultant formally engaged or re-
16 tained by the compensation committee shall meet stand-
17 ards for independence to be promulgated by the Commis-
18 sion.
19 "(d) COMPENSATION COMMITTEE AUTHORITY RE-
20 LATING TO COMPENSATION CONSULTANTS.—
21 "(1) IN GENERAL.—The compensation com-
22 mittee of each issuer, in its capacity as a committee
23 of the board of directors, shall have the authority,
24 in its sole discretion, to retain and obtain the advice
25 of a compensation consultant meeting the standards

1 for independence promulgated pursuant to sub-
2 section (c), and the compensation committee shall be
3 directly responsible for the appointment, compensa-
4 tion, and oversight of the work of such independent
5 compensation consultant. This provision shall not be
6 construed to require the compensation committee to
7 implement or act consistently with the advice or rec-
8 ommendations of the compensation consultant, and
9 shall not otherwise affect the compensation commit-
10 tee's ability or obligation to exercise its own judg-
11 ment in fulfillment of its duties.
12 "(2) DISCLOSURE.—In any proxy or consent
13 solicitation material for an annual meeting of the
14 shareholders (or a special meeting in lieu of the an-
15 nual meeting) occurring on or after the date that is
16 1 year after the date of enactment of the Corporate
17 and Financial Institution Compensation Fairness
18 Act of 2009, each issuer shall disclose in the proxy
19 or consent material, in accordance with regulations
20 to be promulgated by the Commission whether the
21 compensation committee of the issuer retained and
22 obtained the advice of a compensation consultant
23 meeting the standards for independence promulgated
24 pursuant to subsection (c).

1 "(e) AUTHORITY TO ENGAGE INDEPENDENT COUN-
2 SEL AND OTHER ADVISORS.—The compensation com-
3 mittee of each issuer, in its capacity as a committee of
4 the board of directors, shall have the authority, in its sole
5 discretion, to retain and obtain the advice of independent
6 counsel and other advisers meeting the standards for inde-
7 pendence promulgated pursuant to subsection (c), and the
8 compensation committee shall be directly responsible for
9 the appointment, compensation, and oversight of the work
10 of such independent counsel and other advisers. This pro-
11 vision shall not be construed to require the compensation
12 committee to implement or act consistently with the advice
13 or recommendations of such independent counsel and
14 other advisers, and shall not otherwise affect the com-
15 pensation committee's ability or obligation to exercise its
16 own judgment in fulfillment of its duties.
17 "(f) FUNDING.—Each issuer shall provide for appro-
18 priate funding, as determined by the compensation com-
19 mittee, in its capacity as a committee of the board of direc-
20 tors, for payment of compensation—
21 "(1) to any compensation consultant to the
22 compensation committee that meets the standards
23 for independence promulgated pursuant to sub-
24 section (c); and

1 "(2) to any independent counsel or other ad-
2 viser to the compensation committee.".
3 (b) STUDY AND REVIEW REQUIRED.—
4 (1) IN GENERAL.—The Securities Exchange
5 Commission shall conduct a study and review of the
6 use of compensation consultants meeting the stand-
7 ards for independence promulgated pursuant to sec-
8 tion 10B(c) of the Security Exchange Act of 1934
9 (as added by subsection (a)), and the effects of such
10 use.
11 (2) REPORT TO CONGRESS.—Not later than 3
12 years after the date of enactment of this title, the
13 Commission shall submit a report to the Congress
14 on the results of the study and review required by
15 this paragraph.

16 TITLE VI—CREDIT RATING
17 AGENCIES

18 **SEC. 6001. CHANGES TO DESIGNATION.**

19 The Securities Act of 1933 and the Securities Ex-
20 change Act of 1934 are each amended by striking "nation-
21 ally recognized statistical rating" each place it appears
22 and inserting "nationally registered statistical rating".

1 **SEC. 6002. REMOVAL OF STATUTORY REFERENCES TO**
2 **CREDIT RATINGS.**
3 (a) FEDERAL DEPOSIT INSURANCE ACT.—The Fed-
4 eral Deposit Insurance Act (12 U.S.C. 1811 et seq.) is
5 amended—
6 (1) in section 28(d)—
7 (A) in the subsection heading, by striking
8 "not of investment grade";
9 (B) in paragraph (1), by striking "not of
10 investment grade" and inserting "that does not
11 meet standards of credit-worthiness as estab-
12 lished by the Corporation";
13 (C) in paragraph (2), by striking "not of
14 investment grade";
15 (D) by striking paragraph (3) and redesig-
16 nating paragraph (4) as paragraph (3); and
17 (E) in paragraph (3) (as so redesig-
18 nated)—
19 (i) by striking subparagraph (A) and
20 redesignating subparagraphs (B) and (C)
21 as subparagraphs (A) and (B), respec-
22 tively; and
23 (ii) in subparagraph (B) (as so redes-
24 ignated), by striking "not of investment
25 grade" and inserting "that does not meet

1 standards of credit-worthiness as estab-
2 lished by the Corporation";
3 (2) in section 28(e)—
4 (A) in the subsection heading, by striking
5 "not of investment grade";
6 (B) in paragraph (1), by striking "not of
7 investment grade" and inserting "that does not
8 meet standards of credit-worthiness as estab-
9 lished by the Corporation"; and
10 (C) in paragraphs (2) and (3), by striking
11 "not of investment grade" each place that it ap-
12 pears and inserting "that does not meet stand-
13 ards of credit-worthiness established by the
14 Corporation"; and
15 (3) in section 7(b)(1)(E)(i), by striking "credit
16 rating entities, and other private economic" and in-
17 serting "private economic, credit,".
18 (b) FEDERAL HOUSING ENTERPRISES FINANCIAL
19 SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319
20 of the Federal Housing Enterprises Financial Safety and
21 Soundness Act of 1992 (12 U.S.C. 4519) is amended—
22 (1) in the section heading, by striking "by rat-
23 ing organization"; and
24 (2) by striking "that is a nationally recognized
25 statistical rating organization, as such term is de-

1 fined in section 3(a) of the Securities Exchange Act
2 of 1934,".
3 (c) INVESTMENT COMPANY ACT OF 1940.—Section
4 6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940
5 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking
6 "is rated investment grade by not less than 1 nationally
7 recognized statistical rating organization" and inserting
8 "meets such standards of credit-worthiness that the Com-
9 mission shall adopt".
10 (d) REVISED STATUTES.—Section 5136A of title
11 LXII of the Revised Statutes of the United States (12
12 U.S.C. 24a) is amended—
13 (1) in subsection (a)(2)(E), by striking "any
14 applicable rating" and inserting "standards of credit
15 worthiness established by the Comptroller of the
16 Currency";
17 (2) in the heading for subsection (a)(3) by
18 striking "rating or comparable requirement" and in-
19 serting "requirement";
20 (3) in subsection (a)(3), by amending subpara-
21 graph (A) to read as follows:
22 "(A) IN GENERAL.—A national bank meets
23 the requirements of this paragraph if the bank
24 is one of the 100 largest insured banks and has
25 not fewer than 1 issue of outstanding debt that

1 meets standards of credit-worthiness or other
2 criteria as the Secretary of the Treasury and
3 the Board of Governors of the Federal Reserve
4 System may jointly establish.";
5 (4) in the heading for subsection (f), by striking
6 "maintain public rating or" and inserting "meet
7 standards of credit-worthiness"; and
8 (5) in subsection (f)(1), by striking "any appli-
9 cable rating" and inserting "standards of credit-wor-
10 thiness established by the Comptroller of the Cur-
11 rency".
12 (e) SECURITIES EXCHANGE ACT OF 1934.—Section
13 3(a) Securities Exchange Act of 1934 (15 U.S.C.
14 78a(3)(a)) is amended—
15 (1) in paragraph (41), by striking "is rated in
16 one of the two highest rating categories by at least
17 one nationally recognized statistical rating organiza-
18 tion" and inserting "meets standards of credit-wor-
19 thiness as defined by the Commission"; and
20 (2) in paragraph (53)(A), by striking "is rated
21 in 1 of the 4 highest rating categories by at least 1
22 nationally recognized statistical rating organization"
23 and inserting "meets standards of credit-worthiness
24 as defined by the Commission".

1 (f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of
2 the amendment in the nature of a substitute to the text
3 of H.R. 4645, as ordered reported from the Committee
4 on Banking, Finance and Urban Affairs on September 22,
5 1988, as enacted into law by section 555 of Public Law
6 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking
7 "rating" and inserting "worthiness".
8 (g) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect after the end of the 6-month
10 period beginning on the date of the enactment of this title.
11 **SEC. 6003. REVIEW OF RELIANCE ON RATINGS.**
12 (a) AGENCY REVIEW.—
13 (1) REVIEW.—Not later than 1 year after the
14 date of the enactment of this title, each Federal
15 agency listed in paragraph (4) shall, to the extent
16 applicable, review—
17 (A) any regulation issued by such agency
18 that requires the use of an assessment of the
19 credit-worthiness of a security or money market
20 instrument; and
21 (B) any references to or requirements in
22 such regulations regarding credit ratings.
23 (2) MODIFICATIONS REQUIRED.—Each such
24 agency shall modify any such regulations identified
25 by the review conducted under paragraph (1) to re-

1 move any reference to or requirement of reliance on
2 credit ratings and to substitute in such regulations
3 such standard of credit-worthiness as each respective
4 agency shall determine as appropriate for such regu-
5 lations. In making such determination, such agencies
6 shall seek to establish, to the extent feasible, uni-
7 form standards of credit-worthiness for use by each
8 such agency, taking into account the entities regu-
9 lated by each such agency and the purposes for
10 which such entities would rely on such standards of
11 credit-worthiness.

12 (3) REPORT.—Upon conclusion of the review
13 required under paragraph (1), each Federal agency
14 listed in paragraph (4) shall transmit a report to the
15 Congress containing a description of any modifica-
16 tion of any regulation such agency made pursuant to
17 paragraph (2).

18 (4) APPLICABLE AGENCIES.—The agencies re-
19 quired to conduct the review and report required by
20 this subsection are—

21 (A) the Securities and Exchange Commis-
22 sion;

23 (B) the Federal Deposit Insurance Cor-
24 poration;

25 (C) the Office of Thrift Supervision;

1 (D) the Office of the Comptroller of the
2 Currency;
3 (E) the Board of Governors of the Federal
4 Reserve;
5 (F) the National Credit Union Administra-
6 tion; and
7 (G) the Federal Housing Finance Agency.
8 (b) GAO REVIEW OF OTHER AGENCIES.—
9 (1) REVIEW.—The Comptroller General of the
10 United States shall conduct a comprehensive review
11 of the use of credit ratings by Federal agencies other
12 than those listed in subsection (a)(4), including an
13 analysis of the provisions of law or regulation appli-
14 cable to each such agency that refer to and require
15 the use of credit ratings by the agency, and the poli-
16 cies and practices of each agency with respect to
17 credit ratings.
18 (2) REPORT.—Not later than 1 year after the
19 date of the enactment of this title, the Comptroller
20 General shall transmit to the Congress a report on
21 the findings of the study conducted pursuant to
22 paragraph (1), including recommendations for any
23 legislation or rulemaking necessary or appropriate in
24 order for such agencies to reduce their reliance on
25 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

1 (B) the Federal Home Loan Mortgage
2 Corporation.
3 (4) GUARANTEE.—The term "guarantee"
4 means, with respect to an enterprise, the credit sup-
5 port of the enterprise that is provided by the Fed-
6 eral Government through its charter as a Govern-
7 ment-sponsored enterprise.

8 **SEC. 7003. TERMINATION OF CURRENT CONSERVATORSHIP.**

9 (a) IN GENERAL.—Upon the expiration of the period
10 referred to in subsection (b), the Director of the Federal
11 Housing Finance Agency shall determine, with respect to
12 each enterprise, if the enterprise is financially viable at
13 that time and—
14 (1) if the Director determines that the enter-
15 prise is financially viable, immediately take all ac-
16 tions necessary to terminate the conservatorship for
17 each of the enterprises; or
18 (2) if the Director determines that the enter-
19 prise is not financially viable, immediately appoint
20 the Federal Housing Finance Agency as receiver
21 under section 1367 of the Federal Housing Enter-
22 prises Financial Safety and Soundness Act of 1992
23 and carry out such receivership under the authority
24 of such section.

1 (b) TIMING.—The period referred to in this sub-
2 section is, with respect to an enterprise—
3 (1) except as provided in paragraph (2), the 24-
4 month period beginning upon the date of the enact-
5 ment of this title; or
6 (2) if the Director determines before the expira-
7 tion of the period referred to in paragraph (1) that
8 the financial markets would be adversely affected
9 without the extension of such period under this
10 paragraph with respect to that enterprise, the 30-
11 month period beginning upon the date of the enact-
12 ment of this title.
13 (c) FINANCIAL VIABILITY.—The Director may not
14 determine that an enterprise is financially viable for pur-
15 poses of subsection (a) if the Director determines that any
16 of the conditions for receivership set forth in paragraph
17 (3) or (4) of section 1367(a) of the Federal Housing En-
18 terprises Financial Safety and Soundness Act of 1992 (12
19 U.S.C. 4617(a)) exists at the time with respect to the en-
20 terprise.

21 **SEC. 7004. LIMITATION OF ENTERPRISE AUTHORITY UPON**
22 **EMERGENCE FROM CONSERVATORSHIP.**

23 (a) REVISED AUTHORITY.—Upon the expiration of
24 the period referred to in section 7003(b), if the Director

1 makes the determination under section 7003(a)(1), the
2 following provisions shall take effect:
3 (1) PORTFOLIO LIMITATIONS.—Subtitle B of
4 title XIII of the Housing and Community Develop-
5 ment Act of 1992 (12 U.S.C. 4611 et seq.) is
6 amended by adding at the end the following new sec-
7 tion:

8 **"SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF EN-**
9 **TERPRISES.**

10 "(a) RESTRICTION.—No enterprise shall own, as of
11 any applicable date in this subsection or thereafter, mort-
12 gage assets in excess of—
13 "(1) upon the expiration of the period referred
14 to in section 7003(b) of the Government-Sponsored
15 Enterprises Free Market Reform Act of 2009,
16 $850,000,000,000; or
17 "(2) on December 31 of each year thereafter,
18 80.0 percent of the aggregate amount of mortgage
19 assets of the enterprise as of December 31 of the
20 immediately preceding calendar year;
21 except that in no event shall an enterprise be required
22 under this section to own less than $250,000,000,000 in
23 mortgage assets.
24 "(b) DEFINITION OF MORTGAGE ASSETS.—For pur-
25 poses of this section, the term 'mortgage assets' means,

1 with respect to an enterprise, assets of such enterprise
2 consisting of mortgages, mortgage loans, mortgage-related
3 securities, participation certificates, mortgage-backed
4 commercial paper, obligations of real estate mortgage in-
5 vestment conduits and similar assets, in each case to the
6 extent such assets would appear on the balance sheet of
7 such enterprise in accordance with generally accepted ac-
8 counting principles in effect in the United States as of
9 September 7, 2008 (as set forth in the opinions and pro-
10 nouncements of the Accounting Principles Board and the
11 American Institute of Certified Public Accountants and
12 statements and pronouncements of the Financial Account-
13 ing Standards Board from time to time; and without giv-
14 ing any effect to any change that may be made after Sep-
15 tember 7, 2008, in respect of Statement of Financial Ac-
16 counting Standards No. 140 or any similar accounting
17 standard).".

18 (2) INCREASE IN MINIMUM CAPITAL REQUIRE-
19 MENT.—Section 1362 of the Federal Housing En-
20 terprises Financial Safety and Soundness Act of
21 1992 (12 U.S.C. 4612), as amended by section 1111
22 of the Housing and Economic Recovery Act of 2008
23 (Public Law 110–289), is amended—

24 (A) in subsection (a), by striking "For
25 purposes of this subtitle, the minimum capital

1 level for each enterprise shall be" and inserting
2 "The minimum capital level established under
3 subsection (g) for each enterprise may not be
4 lower than";
5 (B) in subsection (c)—
6 (i) by striking "subsections (a) and"
7 and inserting "subsection";
8 (ii) by striking "regulated entities"
9 the first place such term appears and in-
10 serting "Federal Home Loan Banks";
11 (iii) by striking "for the enterprises,";
12 (iv) by striking ", or for both the en-
13 terprises and the banks,";
14 (v) by striking "the level specified in
15 subsection (a) for the enterprises or"; and
16 (vi) by striking "the regulated entities
17 operate" and inserting "such banks oper-
18 ate";
19 (C) in subsection (d)(1)—
20 (i) by striking "subsections (a) and"
21 and inserting "subsection"; and
22 (ii) by striking "regulated entity"
23 each place such term appears and inserting
24 "Federal home loan bank";

1 (D) in subsection (e), by striking "regu-
2 lated entity" each place such term appears and
3 inserting "Federal home loan bank";
4 (E) in subsection (f)—
5 (i) by striking "the amount of core
6 capital maintained by the enterprises,";
7 and
8 (ii) by striking "regulated entities"
9 and inserting "banks"; and
10 (F) by adding at the end the following new
11 subsection:
12 "(g) ESTABLISHMENT OF REVISED MINIMUM CAP-
13 ITAL LEVELS.—
14 "(1) IN GENERAL.—The Director shall cause
15 the enterprises to achieve and maintain adequate
16 capital by establishing minimum levels of capital for
17 the enterprises and by using such other methods as
18 the Director deems appropriate.
19 "(2) AUTHORITY.—The Director shall have the
20 authority to establish such minimum level of capital
21 for an enterprise in excess of the level specified
22 under subsection (a) as the Director, in the Direc-
23 tor's discretion, deems to be necessary or appro-
24 priate in light of the particular circumstances of the
25 enterprise.

1 "(h) FAILURE TO MAINTAIN REVISED MINIMUM
2 CAPITAL LEVELS.—
3 "(1) UNSAFE AND UNSOUND PRACTICE OR CON-
4 DITION.—Failure of an enterprise to maintain cap-
5 ital at or above its minimum level as established
6 pursuant to subsection (c) of this section may be
7 deemed by the Director, in his discretion, to con-
8 stitute an unsafe and unsound practice or condition
9 within the meaning of this title.
10 "(2) DIRECTIVE TO ACHIEVE CAPITAL
11 LEVEL.—
12 "(A) AUTHORITY.—In addition to, or in
13 lieu of, any other action authorized by law, in-
14 cluding paragraph (1), the Director may issue
15 a directive to an enterprise that fails to main-
16 tain capital at or above its required level as es-
17 tablished pursuant to subsection (c) of this sec-
18 tion.
19 "(B) PLAN.—Such directive may require
20 the enterprise to submit and adhere to a plan
21 acceptable to the Director describing the means
22 and timing by which the enterprise shall achieve
23 its required capital level.
24 "(C) ENFORCEMENT.—Any such directive
25 issued pursuant to this paragraph, including

1 plans submitted pursuant thereto, shall be en-
2 forceable under the provisions of subtitle C of
3 this title to the same extent as an effective and
4 outstanding order issued pursuant to subtitle C
5 of this title which has become final.
6 "(3) ADHERENCE TO PLAN.—
7 "(A) CONSIDERATION.—The Director may
8 consider such enterprise's progress in adhering
9 to any plan required under this subsection
10 whenever such enterprise seeks the requisite ap-
11 proval of the Director for any proposal which
12 would divert earnings, diminish capital, or oth-
13 erwise impede such enterprise's progress in
14 achieving its minimum capital level.
15 "(B) DENIAL.—The Director may deny
16 such approval where it determines that such
17 proposal would adversely affect the ability of
18 the enterprise to comply with such plan.".
19 (3) REPEAL OF INCREASES TO CONFORMING
20 LOAN LIMITS.—
21 (A) REPEAL OF TEMPORARY INCREASES.—
22 (i) ECONOMIC STIMULUS ACT OF
23 2008.—Section 201 of the Economic Stim-
24 ulus Act of 2008 (Public Law 110–185) is
25 hereby repealed.

1 (ii) AMERICAN RECOVERY AND REIN-
2 VESTMENT ACT OF 2009.—Section 1203 of
3 division A of the American Recovery and
4 Reinvestment Act of 2009 (Public Law
5 111–5; 123 Stat. 225) is hereby repealed.
6 (B) REPEAL OF GENERAL LIMIT AND PER-
7 MANENT HIGH-COST AREA INCREASE.—Para-
8 graph (2) of section 302(b) of the Federal Na-
9 tional Mortgage Association Charter Act (12
10 U.S.C. 1717(b)(2)) and paragraph (2) of sec-
11 tion 305(a) of the Federal Home Loan Mort-
12 gage Corporation Act (12 U.S.C. 1454(a)(2))
13 are each amended to read as such sections were
14 in effect immediately before the enactment of
15 the Housing and Economic Recovery Act of
16 2008 (Public Law 110–289).
17 (C) REPEAL OF NEW HOUSING PRICE
18 INDEX.—Section 1322 of the Federal Housing
19 Enterprises Financial Safety and Soundness
20 Act of 1992, as added by section 1124(d) of the
21 Housing and Economic Recovery Act of 2008
22 (Public Law 110–289), is hereby repealed.
23 (D) REPEAL.—Section 1124 of the Hous-
24 ing and Economic Recovery Act of 2008 (Public
25 Law 110–289) is hereby repealed.

1 (E) ESTABLISHMENT OF CONFORMING
2 LOAN LIMIT.—For the year in which the expira-
3 tion of the period referred to in section 7003(b)
4 of this section occurs, the limitations governing
5 the maximum original principal obligation of
6 conventional mortgages that may be purchased
7 by the Federal National Mortgage Association
8 and the Federal Home Loan Mortgage Cor-
9 poration, referred to in section 302(b)(2) of the
10 Federal National Mortgage Association Charter
11 Act (12 U.S.C. 1717(b)(2)) and section
12 305(a)(2) of the Federal Home Loan Mortgage
13 Corporation Act (12 U.S.C. 1454(a)(2)), re-
14 spectively, shall be considered to be—
15 (i) $417,000 for a mortgage secured
16 by a single-family residence,
17 (ii) $533,850 for a mortgage secured
18 by a 2-family residence,
19 (iii) $645,300 for a mortgage secured
20 by a 3-family residence, and
21 (iv) $801,950 for a mortgage secured
22 by a 4-family residence,
23 and such limits shall be adjusted effective each
24 January 1 thereafter in accordance with such
25 sections 302(b)(2) and 305(a)(2).

1 (F) PROHIBITION OF PURCHASE OF MORT-
2 GAGES EXCEEDING MEDIAN AREA HOME
3 PRICE.—
4 (i) FANNIE MAE.—Section 302(b)(2)
5 of the Federal National Mortgage Associa-
6 tion Charter Act (12 U.S.C. 1717(b)(2)) is
7 amended by adding at the end the fol-
8 lowing new sentence: "Notwithstanding
9 any other provision of this title, the cor-
10 poration may not purchase any mortgage
11 for a property having a principal obligation
12 that exceeds the median home price, for
13 properties of the same size, for the area in
14 which such property subject to the mort-
15 gage is located.".
16 (ii) FREDDIE MAC.—Section
17 305(a)(2) of the Federal Home Loan
18 Mortgage Corporation Act (12 U.S.C.
19 1454(a)(2)) is amended by adding at the
20 end the following new sentence: "Notwith-
21 standing any other provision of this title,
22 the Corporation may not purchase any
23 mortgage for a property having a principal
24 obligation that exceeds the median home
25 price, for properties of the same size, for

1 the area in which such property subject to
2 the mortgage is located.".
3 (4) REQUIREMENT TO PAY STATE AND LOCAL
4 TAXES.—
5 (A) FANNIE MAE.—Paragraph (2) of sec-
6 tion 309(c) of the Federal National Mortgage
7 Association Charter Act (12 U.S.C.
8 1723a(c)(2)) is amended—
9 (i) by striking "shall be exempt from"
10 and inserting "shall be subject to"; and
11 (ii) by striking "except that any" and
12 inserting "and any".
13 (B) FREDDIE MAC.—Section 303(e) of the
14 Federal Home Loan Mortgage Corporation Act
15 (12 U.S.C. 1452(e)) is amended—
16 (i) by striking "shall be exempt from"
17 and inserting "shall be subject to"; and
18 (ii) by striking "except that any" and
19 inserting "and any".
20 (5) REPEALS RELATING TO REGISTRATION OF
21 SECURITIES.—
22 (A) FANNIE MAE.—
23 (i) MORTGAGE-BACKED SECURI-
24 TIES.—Section 304(d) of the Federal Na-
25 tional Mortgage Association Charter Act

1 (12 U.S.C. 1719(d)) is amended by strik-
2 ing the fourth sentence.
3 (ii) SUBORDINATE OBLIGATIONS.—
4 Section 304(e) of the Federal National
5 Mortgage Association Charter Act (12
6 U.S.C. 1719(e)) is amended by striking the
7 fourth sentence.
8 (B) FREDDIE MAC.—Section 306 of the
9 Federal Home Loan Mortgage Corporation Act
10 (12 U.S.C. 1455) is amended by striking sub-
11 section (g).
12 (6) RECOUPMENT OF COSTS FOR FEDERAL
13 GUARANTEE.—
14 (A) ASSESSMENTS.—The Director of the
15 Federal Housing Finance Agency shall establish
16 and collect from each enterprise assessments in
17 the amount determined under subparagraph
18 (B). In determining the method and timing for
19 making such assessments, the Director shall
20 take into consideration the determinations and
21 conclusions of the study under subsection (b) of
22 this section.
23 (B) DETERMINATION OF COSTS OF GUAR-
24 ANTEE.—Assessments under subparagraph (A)
25 with respect to an enterprise shall be in such

1 amount as the Director determines necessary to
2 recoup to the Federal Government the full value
3 of the benefit the enterprise receives from the
4 guarantee provided by the Federal Government
5 for the obligations and financial viability of the
6 enterprise, based upon the dollar value of such
7 benefit in the market to such enterprise when
8 not operating under conservatorship or receiver-
9 ship. To determine such amount, the Director
10 shall establish a risk-based pricing mechanism
11 as the Director considers appropriate, taking
12 into consideration the determinations and con-
13 clusions of the study under subsection (b) of
14 this section.
15 (C) TREATMENT OF RECOUPED
16 AMOUNTS.—The Director shall cover into the
17 general fund of the Treasury any amounts re-
18 ceived from assessments made under this para-
19 graph.
20 (b) GAO STUDY REGARDING RECOUPMENT OF
21 COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The
22 Comptroller General of the United States shall conduct
23 a study to determine a risk-based pricing mechanism to
24 accurately determine the value of the benefit the enter-
25 prises receive from the guarantee provided by the Federal

1 Government for the obligations and financial viability of
2 the enterprises. Such study shall establish a dollar value
3 of such benefit in the market to each enterprise when not
4 operating under conservatorship or receivership, shall ana-
5 lyze various methods of the Federal Government assessing
6 a charge for such value received (including methods involv-
7 ing an annual fee or a fee for each mortgage purchased
8 or securitized), and shall make a recommendation of the
9 best such method for assessing such charge. Not later
10 than 12 months after the date of the enactment of this
11 title, the Comptroller General shall submit to the Congress
12 a report setting forth the determinations and conclusions
13 of such study.

14 **SEC. 7005. REQUIREMENT TO PERIODICALLY RENEW CHAR-**
15 **TER UNTIL WIND DOWN AND DISSOLUTION.**

16 (a) REQUIRED RENEWAL; WIND DOWN AND DIS-
17 SOLUTION UPON NON-RENEWAL.—Upon the expiration of
18 the 3-year period that begins upon the expiration of the
19 period referred to in section 7003(b), unless the charter
20 of an enterprise is renewed pursuant to subsection (b) of
21 this section, section 7006 (relating to wind down of oper-
22 ations and dissolution of enterprise) shall apply to the en-
23 terprise.

24 (b) RENEWAL PROCEDURE.—

1 (1) APPLICATION; TIMING.—The Director shall
2 provide for each enterprise to apply to the Director,
3 before the expiration of the 3-year period under sub-
4 section (a), for renewal of the charter of the enter-
5 prise.
6 (2) STANDARD.—The Director shall approve
7 the application of an enterprise for the renewal of
8 the charter of the enterprise if—
9 (A) the application includes a certification
10 by the enterprise that the enterprise is finan-
11 cially sound and is complying with all provisions
12 of, and amendments made by, section 7004 of
13 this title applicable to such enterprise; and
14 (B) the Director verifies that the certifi-
15 cation made pursuant to subparagraph (A) is
16 accurate.
17 (c) OPTION TO REAPPLY.—Nothing in this section
18 may be construed to require an enterprise to apply under
19 this section for renewal of the charter of the enterprise.
20 **SEC. 7006. REQUIRED WIND DOWN OF OPERATIONS AND**
21 **DISSOLUTION OF ENTERPRISE.**
22 (a) APPLICABILITY.—This section shall apply to an
23 enterprise—

1 (1) upon the expiration of the 3-year period re-
2 ferred to in such section 7005(a), to the extent pro-
3 vided in such section; and
4 (2) if this section has not previously applied to
5 the enterprise, upon the expiration of the 6-year pe-
6 riod that begins upon the expiration of the period re-
7 ferred to in section 7003(b).
8 (b) WIND DOWN.—Upon the applicability of this sec-
9 tion to an enterprise, the Director and the Secretary of
10 the Treasury shall jointly take such action, and may pre-
11 scribe such regulations and procedures, as may be nec-
12 essary to wind down the operations of an enterprise as
13 an entity chartered by the United States Government over
14 the duration of the 10-year period beginning upon the ap-
15 plicability of this section to the enterprise (pursuant to
16 subsection (a)) in an orderly manner consistent with this
17 title and the ongoing obligations of the enterprise.
18 (c) DIVISION OF ASSETS AND LIABILITIES; AUTHOR-
19 ITY TO ESTABLISH HOLDING CORPORATION AND DIS-
20 SOLUTION TRUST FUND.—The action and procedures re-
21 quired under subsection (b)—
22 (1) shall include the establishment and execu-
23 tion of plans to provide for an equitable division and
24 distribution of assets and liabilities of the enterprise,
25 including any liability of the enterprise to the United

1 States Government or a Federal reserve bank that
2 may continue after the end of the period described
3 in subsection (b); and
4 (2) may provide for establishment of—
5 (A) a holding corporation organized under
6 the laws of any State of the United States or
7 the District of Columbia for the purposes of the
8 reorganization and restructuring of the enter-
9 prise; and
10 (B) one or more trusts to which to trans-
11 fer—
12 (i) remaining debt obligations of the
13 enterprise, for the benefit of holders of
14 such remaining obligations; or
15 (ii) remaining mortgages held for the
16 purpose of backing mortgage-backed secu-
17 rities, for the benefit of holders of such re-
18 maining securities.
19 (d) REPEAL OF CHARTER.—Effective upon the expi-
20 ration of the 10-year period referred to in subsection (b)
21 for an enterprise, the charter for the enterprise is re-
22 pealed, except that the provisions of such charter in effect
23 immediately before such repeal shall continue to apply
24 with respect to the rights and obligations of any holders

1 of outstanding debt obligations and mortgage-backed secu-
2 rities of the enterprise.

3 TITLE VIII—FEDERAL
4 INSURANCE OFFICE

5 **SEC. 8001. SHORT TITLE.**

6 This title may be cited as the "Federal Insurance Of-
7 fice Act of 2009".

8 **SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

9 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
10 chapter 3 of title 31, United States Code, is amended—
11 (1) by transferring and inserting section 312
12 after section 313;
13 (2) by redesignating sections 313 and 312 (as
14 so transferred) as sections 312 and 315, respec-
15 tively; and
16 (3) by inserting after section 312 (as so redes-
17 ignated) the following new sections:

18 **"SEC. 313. FEDERAL INSURANCE OFFICE.**

19 "(a) ESTABLISHMENT OF OFFICE.—There is estab-
20 lished the Federal Insurance Office as an office in the De-
21 partment of the Treasury.
22 "(b) LEADERSHIP.—The Office shall be headed by a
23 Director, who shall be appointed by the Secretary of the
24 Treasury. The position of such Director shall be a career
25 reserved position in the Senior Executive Service.

1 "(c) FUNCTIONS.—

2 "(1) AUTHORITY PURSUANT TO DIRECTION OF
3 SECRETARY.—The Office shall have the authority,
4 pursuant to the direction of the Secretary, as fol-
5 lows:

6 "(A) To monitor the insurance industry to
7 gain expertise.

8 "(B) To identify issues or gaps in the reg-
9 ulation of insurers that could contribute to a
10 systemic crisis in the insurance industry or the
11 United States financial system.

12 "(C) To recommend for review by the Mar-
13 ket Stability and Capital Adequacy Board any
14 activities or practices by insurers or their affili-
15 ates that may be exacerbating systemic risk.

16 "(D) To assist the Secretary in admin-
17 istering the Terrorism Insurance Program es-
18 tablished in the Department of the Treasury
19 under the Terrorism Risk Insurance Act of
20 2002 (15 U.S.C. 6701 note).

21 "(E) To coordinate Federal efforts and de-
22 velop Federal policy on prudential aspects of
23 international insurance matters, including rep-
24 resenting the United States as appropriate in
25 the International Association of Insurance Su-

1 pervisors or any successor organization and as-
2 sisting the Secretary in negotiating covered
3 agreements.
4 "(F) To determine, in accordance with
5 subsection (f), whether State insurance meas-
6 ures are preempted by covered agreements.
7 "(G) To consult with the States regarding
8 insurance matters of national importance and
9 prudential insurance matters of international
10 importance.
11 "(H) To perform such other related duties
12 and authorities as may be assigned to it by the
13 Secretary.
14 "(2) ADVISORY FUNCTIONS.—The Office shall
15 advise the Secretary on major domestic and pruden-
16 tial international insurance policy issues.
17 "(d) SCOPE.—The authority of the Office shall ex-
18 tend to all lines of insurance except health insurance, as
19 determined by the Secretary based on section 2791 of the
20 Public Health Service Act (42 U.S.C. 300gg-91).
21 "(e) GATHERING OF INFORMATION.—
22 "(1) GENERAL.—In carrying out its functions
23 under subsection (c), the Office may request, receive,
24 and collect data and information on and from the in-
25 surance industry and insurers, enter into informa-

1 tion-sharing agreements, analyze and disseminate
2 data and information, and issue reports regarding
3 all lines of insurance except health insurance.
4 "(2) COLLECTION OF INFORMATION FROM IN-
5 SURERS AND AFFILIATES.—Except as provided in
6 paragraph (3) and subject to paragraph (4), the Of-
7 fice may require an insurer, or affiliate of an in-
8 surer, to submit such data or information that the
9 Office may reasonably require in carrying out its
10 functions under subsection (c). Notwithstanding sub-
11 section (p) and for the purposes of this paragraph
12 only, the term 'insurer' means any entity that is au-
13 thorized to write insurance or reinsure risks and
14 issue contracts or policies in one or more States.
15 "(3) EXCEPTION FOR SMALL INSURERS.—Para-
16 graph (2) shall not apply with respect to any insurer
17 or affiliate thereof that meets a minimum size
18 threshold that may be established by the Office by
19 order or rule. Such threshold shall be appropriate to
20 the particular request and need for the data or in-
21 formation.
22 "(4) ADVANCE COORDINATION.—Before col-
23 lecting any data or information under paragraph (2)
24 from an insurer, or affiliate of an insurer, the Office
25 shall coordinate with each relevant Federal agency

1 and State insurance regulator (or other relevant
2 Federal or State regulatory agency, if any, in the
3 case of an affiliate of an insurer) and any publicly
4 available sources to determine if the information to
5 be collected is available from, or may be obtained in
6 a timely manner by, such Federal agency or State
7 insurance regulator, individually or collectively, other
8 regulatory agency, or publicly available sources. If
9 the Director determines that such data or informa-
10 tion is available, or may be obtained in a timely
11 manner, from such an agency, regulator, regulatory
12 agency, or source, the Director shall obtain the data
13 or information from such agency, regulator, regu-
14 latory agency, or source. If the Director determines
15 that such data or information is not so available, the
16 Director may collect such data or information from
17 an insurer (or affiliate) only if the Director complies
18 with the requirements of subchapter I of chapter 35
19 of title 44, United States Code (relating to Federal
20 information policy; commonly known as the Paper-
21 work Reduction Act) in collecting such data or infor-
22 mation. Notwithstanding any other provision of law,
23 each such relevant Federal agency and State insur-
24 ance regulator or other Federal or State regulatory

1 agency is authorized to provide to the Office such
2 data or information.
3 "(5) CONFIDENTIALITY.—
4 "(A) The submission of any non-publicly
5 available data and information to the Office
6 under this subsection shall not constitute a
7 waiver of, or otherwise affect, any privilege aris-
8 ing under Federal or State law (including the
9 rules of any Federal or State Court) to which
10 the data or information is otherwise subject.
11 "(B) Any requirement under Federal or
12 State law to the extent otherwise applicable, or
13 any requirement pursuant to a written agree-
14 ment in effect between the original source of
15 any non-publicly available data or information
16 and the source of such data or information to
17 the Office, regarding the privacy or confiden-
18 tiality of any data or information in the posses-
19 sion of the source to the Office, shall continue
20 to apply to such data or information after the
21 data or information has been provided pursuant
22 to this subsection to the Office.
23 "(C) Any data or information obtained by
24 the Office may be made available to State in-
25 surance regulators individually or collectively

1 through an information sharing agreement that
2 shall comply with applicable Federal law and
3 that shall not constitute a waiver of, or other-
4 wise affect, any privilege under Federal or
5 State law (including the rules of any Federal or
6 State Court) to which the data or information
7 is otherwise subject.
8 "(D) Section 552 of title 5, United States
9 Code, shall apply to any data or information
10 submitted by an insurer or affiliate of an in-
11 surer.
12 "(f) PREEMPTION OF STATE INSURANCE MEAS-
13 URES.—
14 "(1) STANDARD.—A State insurance measure
15 shall be preempted pursuant to this section or sec-
16 tion 314 if, and only to the extent that the Director
17 determines, in accordance with this subsection, that
18 the measure—
19 "(A) directly results in less favorable treat-
20 ment of a non-United States insurer domiciled
21 in a foreign jurisdiction that is subject to a cov-
22 ered agreement than a United States insurer
23 domiciled, licensed, admitted, or otherwise au-
24 thorized in that State; and

1 "(B) is inconsistent with a covered agree-
2 ment that is entered into on a date after the
3 date of the enactment of this Act.
4 "(2) DETERMINATION.—
5 "(A) NOTICE OF POTENTIAL INCONSIST-
6 ENCY.—Before making any determination of in-
7 consistency, the Director shall—
8 "(i) notify and consult with the appro-
9 priate State regarding any potential incon-
10 sistency or preemption;
11 "(ii) notify and consult with the
12 United States Trade Representative re-
13 garding any potential inconsistency or pre-
14 emption;
15 "(iii) cause to be published in the
16 Federal Register notice of the issue re-
17 garding the potential inconsistency or pre-
18 emption, including a description of each
19 State insurance measure at issue and any
20 applicable covered agreement;
21 "(iv) provide interested parties a rea-
22 sonable opportunity to submit written com-
23 ments to the Office;
24 "(v) consider the effect of preemption
25 on—

1 "(I) the protection of policy-
2 holders and policy claimants;
3 "(II) the maintenance of the
4 safety, soundness, integrity, and fi-
5 nancial responsibility of any entity in-
6 volved in the business of insurance or
7 insurance operations;
8 "(III) ensuring the integrity and
9 stability of the United States financial
10 system; and
11 "(IV) the creation of a gap or
12 void in financial or market conduct
13 regulation of any entity involved in
14 the business of insurance or insurance
15 operations in the United States; and
16 "(vi) consider any comments received.
17 The Director shall provide the notifications re-
18 quired under clauses (i), (ii), and (iii) contem-
19 poraneously.
20 "(B) SCOPE OF REVIEW.—For purposes of
21 this section, the Director's determination of
22 State insurance measures shall be limited to the
23 subject matter of the prudential measures ap-
24 plicable to the business of insurance contained
25 within the covered agreement involved.

1 "(C) NOTICE OF DETERMINATION OF IN-
2 CONSISTENCY.—Upon making any determina-
3 tion of inconsistency, the Director shall—
4 "(i) notify the appropriate State of
5 the determination and the extent of the in-
6 consistency;
7 "(ii) establish a reasonable period of
8 time, which shall not be shorter than 90
9 days, before the determination shall be-
10 come effective; and
11 "(iii) notify the Committee on Finan-
12 cial Services of the House of Representa-
13 tives and the Committee on Banking,
14 Housing, and Urban Affairs of the Senate
15 of the inconsistency.
16 "(3) NOTICE OF EFFECTIVENESS.—Upon the
17 conclusion of the period referred to in paragraph
18 (2)(C)(ii), if the basis for the determination of in-
19 consistency still exists, the determination shall be-
20 come effective and the Director shall—
21 "(A) cause to be published notice in the
22 Federal Register that the preemption has be-
23 come effective, as well as the effective date; and
24 "(B) notify the appropriate State.

1 "(4) LIMITATION.—No State may enforce a
2 State insurance measure to the extent that it has
3 been preempted under this subsection.
4 "(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
5 DURE ACT.—Determinations of inconsistency pursuant to
6 subsection (f)(2) shall be subject to the applicable provi-
7 sions of subchapter II of chapter 5 of title 5, United
8 States Code (relating to administrative procedure), and
9 chapter 7 of such title (relating to judicial review), except
10 that in any action for judicial review of a determination
11 of inconsistency, the court shall determine the matter de
12 novo.
13 "(h) REGULATIONS, POLICIES, AND PROCEDURES.—
14 The Secretary may issue orders, regulations, policies and
15 procedures to implement this section.
16 "(i) CONSULTATION.—The Director shall consult
17 with State insurance regulators, individually and collec-
18 tively, to the extent the Director determines appropriate,
19 in carrying out the functions of the Office.
20 "(j) SAVINGS PROVISIONS.—Nothing in this section
21 shall—
22 "(1) preempt any State insurance measure that
23 governs any insurer's rates, premiums, underwriting
24 or sales practices, or State coverage requirements

1 for insurance, or to the application of the antitrust
2 laws of any State to the business of insurance;
3 "(2) preempt any State insurance measure gov-
4 erning the capital or solvency of an insurer, except
5 to the extent that such State insurance measure di-
6 rectly results in less favorable treatment of a non-
7 United States insurer than a United States insurer;
8 "(3) be construed to alter, amend, or limit the
9 responsibility of any department or agency of the
10 Federal Government to issue regulations under the
11 Truth in Lending Act (15 U.S.C. 1601 et seq.) or
12 any other Federal law regulating the provision of
13 consumer financial products or services;
14 "(4) preempt any State insurance measure be-
15 cause of inconsistency with any agreement that is
16 not a covered agreement (as such term in defined in
17 subsection (p)); or
18 "(5) affect the preemption of any State insur-
19 ance measure otherwise inconsistent with and pre-
20 empted by Federal law.
21 "(k) RETENTION OF EXISTING STATE REGULATORY
22 AUTHORITY.—Nothing in this section or section 314 shall
23 be construed to establish a general supervisory or regu-
24 latory authority of the Office or the Department of the
25 Treasury over the business of insurance.

1 "(l) RETENTION OF AUTHORITY OF FEDERAL FI-
2 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
3 tion or section 314 shall be construed to limit the author-
4 ity of any Federal financial regulatory agency, including
5 the authority to develop and coordinate policy, negotiate,
6 and enter into agreements with foreign governments, au-
7 thorities, regulators, and multi-national regulatory com-
8 mittees and to preempt State measures to affect uni-
9 formity with international regulatory agreements.

10 "(m) RETENTION OF AUTHORITY OF UNITED
11 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
12 tion or section 314 shall be construed to affect the author-
13 ity of the Office of the United States Trade Representative
14 pursuant to section 141 of the Trade Act of 1974 (19
15 U.S.C. 2171) or any other provision of law, including au-
16 thority over the development and coordination of United
17 States international trade policy and the administration
18 of the United States trade agreements program.

19 "(n) REPORTS TO CONGRESS.—

20 "(1) ANNUAL REPORT.—Beginning September
21 30, 2011, the Director shall submit a report on or
22 before September 30 of each calendar year to the
23 President and to the Committees on Financial Serv-
24 ices and Ways and Means of the House of Rep-
25 resentatives and the Committees on Banking, Hous-

1 ing, and Urban Affairs and Finance of the Senate
2 on the insurance industry, any actions taken by the
3 office pursuant to subsection (f) (regarding preemp-
4 tion of inconsistent State insurance measures).
5 "(2) OTHER REPORTS.—The Director shall sub-
6 mit to the President and the Committees referred to
7 in paragraph (1) any other information or reports as
8 deemed relevant by the Director or as requested by
9 the Chairman or Ranking Member of any of such
10 Committees.
11 "(o) USE OF EXISTING RESOURCES.—To carry out
12 this section, the Office may employ personnel, facilities,
13 and other Department of the Treasury resources available
14 to the Secretary and the Secretary shall dedicate specific
15 personnel to the Office.
16 "(p) DEFINITIONS.—For purposes of this section and
17 section 314, the following definitions shall apply:
18 "(1) AFFILIATE.—The term 'affiliate' means,
19 with respect to an insurer, any person that controls,
20 is controlled by, or is under common control with the
21 insurer.
22 "(2) COVERED AGREEMENT.—The term 'cov-
23 ered agreement' means a written bilateral or multi-
24 lateral recognition agreement that—

1 "(A) is entered into between the United
2 States and one or more foreign governments,
3 authorities, or regulatory entities; and
4 "(B) provides for recognition of prudential
5 measures with respect to the business of insur-
6 ance or reinsurance that achieves a level of pro-
7 tection for insurance or reinsurance consumers
8 that is substantially equivalent to the level of
9 protection achieved under State insurance or re-
10 insurance regulation.
11 "(3) DETERMINATION OF INCONSISTENCY.—
12 The term 'determination of inconsistency' means a
13 determination that a State insurance measure is pre-
14 empted under subsection (f).
15 "(4) FEDERAL FINANCIAL REGULATORY AGEN-
16 CY.—The term 'Federal financial regulatory agency'
17 means the Department of the Treasury, the Board
18 of Governors of the Federal Reserve System, the Of-
19 fice of the Comptroller of the Currency, the Office
20 of Thrift Supervision, the Securities and Exchange
21 Commission, the Commodity Futures Trading Com-
22 mission, the Federal Deposit Insurance Corporation,
23 the Federal Housing Finance Agency, or the Na-
24 tional Credit Union Administration.

1 "(5) INSURER.—The term 'insurer' means any
2 person engaged in the business of insurance, includ-
3 ing reinsurance.
4 "(6) NON-UNITED STATES INSURER.—The term
5 'non-United States insurer' means an insurer that is
6 organized under the laws of a jurisdiction other than
7 a State, but does not include any United States
8 branch of such an insurer.
9 "(7) OFFICE.—The term 'Office' means the
10 Federal Insurance Office established by this section.
11 "(8) SECRETARY.—The term 'Secretary' means
12 the Secretary of the Treasury.
13 "(9) STATE.—The term 'State' means any
14 State, commonwealth, territory, or possession of the
15 United States, the District of Columbia, the Com-
16 monwealth of Puerto Rico, the Commonwealth of the
17 Northern Mariana Islands, American Samoa, Guam,
18 or the United States Virgin Islands.
19 "(10) STATE INSURANCE MEASURE.—The term
20 'State insurance measure' means any State law, reg-
21 ulation, administrative ruling, bulletin, guideline, or
22 practice relating to or affecting prudential measures
23 applicable to insurance or reinsurance.
24 "(11) STATE INSURANCE REGULATOR.—The
25 term 'State insurance regulator' means any State

1 regulatory authority responsible for the supervision
2 of insurers.
3 "(12) UNITED STATES INSURER.—The term
4 'United States insurer' means—
5 "(A) an insurer that is organized under
6 the laws of a State; or
7 "(B) a United States branch of a non-
8 United States insurer.
9 "(q) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated for the Office such sums
11 as may be necessary for each fiscal year.
12 **"SEC. 314. COVERED AGREEMENTS.**
13 "(a) AUTHORITY.—The Secretary and the United
14 States Trade Representative are authorized, jointly, to ne-
15 gotiate and enter into covered agreements on behalf of the
16 United States.
17 "(b) REQUIREMENTS FOR CONSULTATION WITH
18 CONGRESS.—
19 "(1) IN GENERAL.—Before initiating negotia-
20 tions to enter into a covered agreement under sub-
21 section (a), during such negotiations, and before en-
22 tering into any such agreement, the Secretary and
23 the United States Trade Representative shall jointly
24 consult with the Committee on Financial Services
25 and the Committee on Ways and Means of the

1 House of Representatives and the Committee on
2 Banking, Housing, and Urban Affairs and the Com-
3 mittee on Finance of the Senate.
4 "(2) SCOPE.—The consultation described in
5 paragraph (1) shall include consultation with respect
6 to—
7 "(A) the nature of the agreement;
8 "(B) how and to what extent the agree-
9 ment will achieve the applicable purposes, poli-
10 cies, priorities, and objectives of section 313
11 and this section; and
12 "(C) the implementation of the agreement,
13 including the general effect of the agreement on
14 existing State laws.
15 "(c) SUBMISSION AND LAYOVER PROVISIONS.—A
16 covered agreement under subsection (a) may enter into
17 force with respect to the United States only if—
18 "(1) the Secretary and the United States Trade
19 Representative jointly submit to the congressional
20 committees specified in subsection (b)(1), on a day
21 on which both Houses of Congress are in session, a
22 copy of the final legal text of the agreement; and
23 "(2) a period of 90 calendar days beginning on
24 the date on which the copy of the final legal text of

1 the agreement is submitted to the congressional
2 committees under paragraph (1) has expired.".
3 (b) DUTIES OF SECRETARY.—Section 321(a) of title
4 31, United States Code, is amended—
5 (1) in paragraph (7), by striking "and" at the
6 end;
7 (2) in paragraph (8)(C), by striking the period
8 at the end and inserting "; and"; and
9 (3) by adding at the end the following new
10 paragraph:
11 "(9) advise the President on major domestic
12 and international prudential policy issues in connec-
13 tion with all lines of insurance except health insur-
14 ance.".
15 (c) CLERICAL AMENDMENT.—The table of sections
16 for subchapter I of chapter 3 of title 31, United States
17 Code, is amended by striking the item relating to section
18 312 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.".

19 **SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**
20 Not later than September 30, 2011, the Director of
21 the Federal Insurance Office appointed under section
22 313(b) of title 31, United States Code (as amended by
23 section 8002(a)(3) of this title) shall submit to the Com-

1 mittee on Financial Services of the House of Representa-
2 tives and the Committee on Banking, Housing, and Urban
3 Affairs of the Senate a report describing the breadth and
4 scope of the global reinsurance market and the critical role
5 such market plays in supporting insurance in the United
6 States.

7 **SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT**
8 **OF INSURANCE REGULATION IN THE UNITED**
9 **STATES.**

10 (a) STUDY.—The Director of the Federal Insurance
11 Office appointed under section 313(b) of title 31, United
12 States Code (as amended by section 8002(a)(3) of this
13 title) shall conduct a study on how to modernize and im-
14 prove the system of insurance regulation in the United
15 States. Such study shall include consideration of the fol-
16 lowing:

17 (1) Effective systemic risk regulation with re-
18 spect to insurance.

19 (2) Strong capital standards and an appro-
20 priate match between capital allocation and liabil-
21 ities for all risk.

22 (3) Meaningful and consistent consumer protec-
23 tion for insurance products and practices.

1 (4) Increased national uniformity through ei-
2 ther a Federal charter or effective action by the
3 States.
4 (5) Improved and broadened regulation of in-
5 surance companies and affiliates on a consolidated
6 basis, including affiliates outside of the traditional
7 insurance business.
8 (6) International coordination.
9 (b) REPORT.—Not later than one year after the date
10 of the enactment of this Act, the Director shall submit
11 to the Committee on Financial Services of the House of
12 Representatives and the Committee on Banking, Housing,
13 and Urban Affairs of the Senate a report containing—
14 (1) the results of the study conducted under
15 subsection (a); and
16 (2) any legislative, administrative, or regulatory
17 recommendations that the Director considers appro-
18 priate to modernize and improve the system of in-
19 surance regulation in the United States.
20 (c) CONSULTATION.—In carrying out subsections (a)
21 and (b), the Director shall consult with State insurance
22 commissioners, consumer organizations, representatives of
23 the insurance industry, policyholders, and other persons,
24 as the Director considers appropriate.