111TH CONGRESS
1ST SESSION

S. _____

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the

establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Restoring American Financial Stability Act of 2009''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Severability.
Sec. 4. Effective date.

TITLE I—AGENCY FOR FINANCIAL STABILITY

Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. Agency for Financial Stability established.
Sec. 104. Agency authority.
Sec. 105. Authority to require supervision and regulation of financial companies to mitigate systemic risk.
Sec. 106. Registration with FIRA by specified financial companies.
Sec. 107. Enhanced supervision and prudential standards for specified financial companies.
Sec. 108. Heightened standards for bank holding companies that are not specified financial companies.
Sec. 109. Reports, examinations, and public disclosures.
Sec. 110. Affiliations.
Sec. 111. Prompt corrective action for specified financial companies.
Sec. 112. Concentration limits.
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Sec. 114. Avoiding duplication.
Sec. 115. Agency funding.
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Sec. 117. Additional standards applicable to activities or practices for financial stability purposes.
Sec. 118. Effect of rescission of identification.
Sec. 119. Mitigation of systemic risk.
Sec. 120. Rule of construction.

TITLE II—ENHANCED RESOLUTION AUTHORITY

Sec. 201. Definitions.
Sec. 202. Systemic risk determination.
Sec. 203. Resolution; stabilization.
Sec. 204. Judicial review.
Sec. 205. Directors not liable for acquiescing in appointment of receiver.
Sec. 206. Termination and exclusion of other actions.
Sec. 207. Rulemaking.
Sec. 208. Powers and duties of the Corporation.
Sec. 209. Clarification of prohibition regarding concealment of assets from receiver or liquidating agent.
Sec. 210. Miscellaneous provisions.

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Sec. 321. Transfer date.
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Sec. 332. Regulations and orders.
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Sec. 335. Funding.
Sec. 336. Personnel.
Sec. 337. Contracting and leasing authority.

Subtitle D—Additional FIRA Authority

Sec. 341. Examinations of companies that do not control banks.
Sec. 342. Enforcement.
Sec. 343. Acquisitions.

Sec. 344. Prohibition against management interlocks between certain financial holding companies.

Subtitle E—Transitional Provisions

Sec. 351. Use of funds, personnel, and property.
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Sec. 353. Property transferred.
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Sec. 355. Disposition of affairs.
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Sec. 361. Termination of Federal savings associations.
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Subtitle G—Additional Powers of the Corporation

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TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

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Sec. 403. Elimination of private adviser exemption; limited exemption for foreign private advisers; limited intrastate exemption.
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SEC. 2. DEFINITIONS.

As used in this Act, the following definitions shall apply, except as the context otherwise requires or as otherwise specifically provided in this Act:

(1) ADVISORY BOARD.—The term ''Advisory Board'' means the State Bank Advisory Board established under title III.

(2) AFFILIATE.—The term ''affiliate'' means any company that controls, is controlled by, or is under common control with another company.

(3) AGENCY.—The term ''Agency'' means the Agency for Financial Stability established under title I.

(4) APPROPRIATE FEDERAL BANKING AGENCY.—On and after the transfer date, as defined in section 302, the term ''appropriate Federal banking agency'' means FIRA.

(5) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(6) CFPA.—The term ''CFPA'' means the Consumer Financial Protection Agency established under title X.

(7) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission, except in the context of the Commodity Futures Trading Commission.

(8) CORPORATION.—The term ''Corporation'' means the Federal Deposit Insurance Corporation.

(9) CREDIT UNION.—The term ''credit union'' means a Federal credit union, State credit union, or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(10) FEDERAL BANKING AGENCY.—The term—

(A) ''Federal banking agency'' means the Board of Governors, FIRA, and the Corporation; and

(B) ''Federal banking agencies'' means all of the agencies referred to in subparagraph (A), collectively.

(11) FIRA.—The terms ''FIRA'' and ''FIRA Board'' mean the Financial Institutions Regulatory Administration established under title III, and the Board of Directors thereof, respectively.

(12) FUNCTIONALLY REGULATED SUBSIDIARY.—The term ''functionally regulated subsidiary''has the same meaning as in section 5(c)(5) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(5)).

(13) PRIMARY FINANCIAL REGULATORY AGENCY.—The term ''primary financial regulatory agency'' means—

(A) FIRA, with respect to an insured depository institution, a bank holding company, a savings and loan holding company (as defined in section 10(a) of the Homeowners' Loan Act), a specified financial company, and a branch, agency, representative office, or commercial lending company of a foreign bank (as defined in section 1 of the International Banking Act of 1978);

(B) the Securities and Exchange Commission, with respect to—

(i) any broker or dealer that is registered with the Commission under the Securities Exchange Act of 1934;

(ii) any investment company that is registered with the Commission under the Investment Company Act of 1940;

(iii) any investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, with respect to the investment advisory activities of such company and activities that are incidental to such advisory activities; and

(iv) any clearing agency registered with the Commission under the Securities Exchange Act of 1934;

(C) the Commodity Futures Trading Commission, with respect to any futures commission merchant, any commodity trading adviser, and any commodity pool operator registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, with respect to the commodities activities of such entity and activities that are incidental to such commodities activities; and

(D) the State insurance authority of the State in which an insurance company is domiciled, with respect to the insurance activities and activities that are incidental to such insurance activities of an insurance company that is subject to supervision by the State insurance authority under State insurance law.

(14) PRUDENTIAL STANDARDS.—The term ''prudential standards'' means enhanced supervision and regulatory standards developed by the Agency under section 107, applicable to specified financial companies.

(15) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(16) SECURITIES TERMS.—The—

(A) terms ''broker'', ''dealer'', ''issuer'', ''nationally recognized statistical ratings organization'', ''security'', and ''securities laws'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(B) term ''investment adviser'' has the same meaning as in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(C) term ''investment company'' has the same meaning as in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

(17) STATE.—The term ''State'' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(18) WELL CAPITALIZED.—The term ''well capitalized'' has the same meaning as in section 110.

(19) WELL MANAGED.—The term ''well managed'' has the same meaning as in section 2(o)(9) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(9)).

(20) OTHER INCORPORATED DEFINITIONS.—The terms ''affiliate'', ''bank'', ''bank holding company'', ''control'' (when used with respect to a depository institution), ''deposit'', ''depository institution'', ''appropriate Federal banking agency'', ''Federal savings association'', ''including'', ''insured branch'', ''insured depository institution'', ''national member bank'', ''national nonmember bank'', ''savings association'', ''State bank'', ''State member bank'', ''State nonmember bank'', ''State savings as-

sociation'', and ''subsidiary'' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

SEC. 3. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 4. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act and the amendments made in this Act, this Act and such amendments shall take effect on the date of enactment of this Act.

TITLE I—AGENCY FOR FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2009''.

SEC. 102. DEFINITIONS.

For purposes of this title the following definitions shall apply:

(1) AGENCY.—The term ''Agency'' means the Agency for Financial Stability established under this title.

(2) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(3) FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than one that would be treated in the United States as a bank holding company) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) in whole or in part engaged in, directly or indirectly, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank holding company) that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) in whole or in part engaged in, directly or indirectly, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) FINANCIAL COMPANY.—The term ''financial company'' means a U.S. nonbank financial company, a foreign nonbank financial company, and a bank holding company, collectively.

(4) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a member of the board of directors of the Agency.

(5) SPECIFIED COMPANY DEFINITIONS.—

(A) SPECIFIED BANK HOLDING COMPANY.—The term ''specified bank holding company'' means a bank holding company that is subject to enhanced supervision and prudential standards, in accordance with section 107.

(B) SPECIFIED FOREIGN NONBANK FINANCIAL COMPANY.—The term ''specified foreign nonbank financial company'' means a foreign nonbank financial company that is subject to

enhanced supervision and prudential standards, in accordance with section 107.

(C) SPECIFIED U.S. NONBANK FINANCIAL COMPANY.—The term ''specified U.S. nonbank financial company'' means a U.S. nonbank financial company that is subject to enhanced supervision and prudential standards, in accordance with section 107.

(D) SPECIFIED FINANCIAL COMPANY.—The term ''specified financial company'' means a specified U.S. nonbank financial company, a specified foreign nonbank financial company, and a specified bank holding company, collectively.

SEC. 103. AGENCY FOR FINANCIAL STABILITY ESTABLISHED.

(a) ESTABLISHMENT.—There is established the Agency for Financial Stability, which shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) MEMBERSHIP.—The Agency shall be headed by a board of directors, which shall consist of—

(1) the Chairperson of the Agency, who shall be appointed by the President, by and with the advice and consent of the Senate;

(2) the Secretary of the Treasury;

(3) the Chairman of the Board of Governors of the Federal Reserve System;

(4) the Chairperson of FIRA;

(5) the Director of the CFPA;

(6) the Chairman of the Commission;

(7) the Chairperson of the Corporation;

(8) the Chairperson of the Commodity Futures Trading Commission; and

(9) an independent member appointed by the President, by and with the advice and consent of the Senate, having experience in insurance industry or regulation.

(c) TERMS; VACANCY.—

(1) TERMS.—The Chairperson and the independent member of the board of directors of the Agency shall each serve for a term of 6 years.

(2) VACANCY.—Any vacancy on the board of directors of the Agency shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Secretary, Chairman, Chairperson, or Director of a member agency, and pending the appointment of a successor, or during the absence or disability of the Secretary,

Chairman, Chairperson, or Director, the acting Secretary, Chairman, Chairperson, or Director shall be a member of the board of directors in the place of the Secretary, Chairman, Chairperson, or Director.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Agency is authorized to appoint such special advisory, technical, or professional committees as may be useful in carrying out its functions, and the members of such committees may be members of the board of directors of the Agency, or other persons, or both.

(e) BOARD MEETINGS.—The board of directors of the Agency shall meet at the call of the Chairperson, but not less frequently than quarterly.

(f) NONAPPLICABILITY OF CERTAIN FEDERAL LAWS.—The Federal Advisory Committee Act shall not apply to the Agency, or to any special advisory, technical, or professional committees appointed by the Agency.

(g) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States is authorized to provide to the Agency and any special advisory, technical, or professional committees appointed by the Agency, such services, funds, facilities, staff, and other support services as it may determine advisable.

(h) COMPENSATION OF MEMBERS OF THE BOARD OF DIRECTORS.—

(1) CHAIRPERSON.—The Chairperson of the board of directors of the Agency shall receive compensation at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(2) FEDERAL EMPLOYEE BOARD MEMBERS.—All members of the board of directors of the Agency who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(3) NON-FEDERAL EMPLOYEE BOARD MEMBER.—The member of the board of directors of the Agency who is not an officer or employee of the Federal Government shall be compensated at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(4) CONFORMING AMENDMENTS.—Section 5313 of title 5, United States Code, is amended by adding at the end the following:

''Chairperson of the Agency for Financial Stability''.

(i) AGENCY PERSONNEL.—

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

(2) COMPENSATION.—The Agency shall fix, adjust, and administer the pay for all employees of the Agency, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(3) COMPARABILITY.—Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b(a)) is amended—

(A) by striking ''the Comptroller of the Currency'' and inserting ''the Agency for Financial Stability, the Financial Institutions Regulatory Administration, the Consumer Financial Protection Agency,'';

(B) by striking ''Board,'' and inserting ''Board, and''; and

(C) by striking ''and the Office of Thrift Supervision,''.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Agency without reimbursement, and such detail shall be

without interruption or loss of civil service status or privilege.

(k) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(l) CONTRACTING AND LEASING AUTHORITY.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Chairperson may—

(1) enter into and perform contracts, execute instruments, and acquire, in any lawful manner, such goods and services, or personal or real property (or property interest), as the Chairperson deems necessary to carry out the duties and responsibilities of the Agency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

SEC. 104. AGENCY AUTHORITY.

(a) PURPOSES AND DUTIES OF THE AGENCY.—

(1) IN GENERAL.—The purposes of the Agency are—

(A) to identify risks to United States financial system stability and economic growth that could arise from the material financial distress or failure of large or complex financial companies;

(B) to promote market discipline by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging risks in financial activities and products that could destabilize United States financial markets.

(2) DUTIES.—To fulfill its purposes, the Agency shall, in accordance with this title—

(A) collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary, directly from financial companies in order to assess risks to the financial system;

(B) monitor the financial services marketplace in order to identify potential threats to

the stability of the United States financial system;

(C) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(D) identify gaps in regulation that could pose risk to the stability of the United States financial system;

(E) require financial companies that may pose threats to United States financial system stability or economic growth in the event of their material financial distress or failure to submit to enhanced supervision and heightened prudential standards;

(F) promulgate regulations to establish heightened prudential standards and reporting and disclosure requirements for specified financial companies;

(G) promulgate regulations to establish heightened risk-based capital, leverage, and liquidity requirements that increase on a graduated basis for certain bank holding companies;

(H) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in section 803), and require such utilities and activities to be subject to prudential standards established by the Board of Governors;

(I) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the board of directors of the Agency; and

(J) report to and testify before Congress semiannually on—

(i) the activities of the Agency;

(ii) significant financial market developments and potential emerging threats to United States financial system stability;

(iii) all determinations made under Section 105 and the basis for such determinations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market disciplines; and

(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Agency is authorized to receive, and may request the production of, any data or information from member agencies, as necessary—

(A) to monitor the financial services marketplace to identify potential threats to the stability of the United States financial system; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSION BY MEMBER AGENCIES.—Notwithstanding any other provision of law, any member agency is authorized to provide information to the Agency, and the Agency and the other member agencies shall maintain the confidentiality of such information.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Agency may require the submission of periodic and other reports from any financial company solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to United States financial stability.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from financial companies that are regulated by member agencies, the Agency shall coordinate with such member agencies and shall, whenever possible, rely on information already being collected by such member agencies.

(4) BACK-UP EXAMINATION BY FIRA.—If the Agency is unable to determine whether the financial activities of a financial company pose a threat to United States financial stability, based on information or reports obtained under paragraph (3), discussions with management, and publicly available information, the Agency may request FIRA, and FIRA is authorized, to conduct an examination of the financial company for the sole purpose of determining whether a financial company should be treat-

ed as a specified financial company for purposes of this title.

SEC. 105. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF FINANCIAL COMPANIES TO MITIGATE SYSTEMIC RISK.

(a) SPECIFIED BANK HOLDING COMPANIES AND SPECIFIED U.S. NONBANK FINANCIAL COMPANIES.—The Agency, on a nondelegable basis, may determine, by regulation or order, that a bank holding company or a U.S. nonbank financial company shall be designated as a specified bank holding company or specified U.S. nonbank financial company, respectively, that is subject to enhanced supervision and prudential standards, in accordance with this title, if the Agency determines that material financial distress at the bank holding company or U.S. nonbank financial company would pose a threat to United States financial stability or the United States economy during times of economic stress, based on a consideration of—

(1) the amount and nature of the financial assets of the company;

(2) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(3) the extent and type of the off-balance-sheet exposures of the company;

(4) the extent and type of the transactions of the company and relationships with other major financial companies;

(5) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(6) the recommendation, if any, of a member of the board of directors of the Agency;

(7) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company; and

(8) any other factors that the Agency deems appropriate.

(b) SPECIFIED FOREIGN NONBANK FINANCIAL COMPANIES.—The Agency, on a nondelegable basis, may determine, by regulation or order, that a foreign nonbank financial company that has substantial assets or operations in the United States shall be designated as a specified foreign financial company that is subject to enhanced supervision and prudential standards in accordance with this title, if the Agency determines that material financial distress at the foreign nonbank financial company would pose a threat to United States financial stability or the United States economy, based on consideration of—

(1) the principles of national treatment and equality of competitive opportunity;

(2) the amount and nature of the United States financial assets of the company;

(3) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(4) the extent of the United States-related off-balance-sheet exposure of the company;

(5) the extent of the transactions or relationships of the company with other United States financial companies;

(6) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(7) the recommendation, if any, of a member of the board of directors of the Agency; and

(8) any other factors that the Agency deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Agency shall—

(1) not less frequently than annually, reevaluate its determinations under subsections (a) and (b) with respect to each specified financial company; and

(2) by order, rescind any such determination, if the Agency determines that the financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Agency shall provide to a financial company written notice of a proposed determination of the Agency, including an explanation of the basis of the proposed determination of the Agency, that such financial company shall be subject to enhanced supervision and prudential standards in accordance with this title, as a specified financial company.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the financial company may request, in writing, an opportunity for a written or oral hearing before the Agency to contest the proposed determination. Upon receipt of a timely request, the Agency shall fix a time (not later than 30 days after the date of receipt of the request) and

place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Agency, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Agency shall notify the financial company of the final determination of the Agency, which shall contain a statement of the basis for the decision of the Agency.

(4) NO HEARING REQUESTED.—If a financial company does not make a timely request for a hearing, the Agency shall notify the financial company, in writing, of the final determination of the Agency under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Agency may waive or modify the requirements of subsection (d) with respect to a financial company, if the Agency determines, by an affirmative vote of not fewer than a majority of its members (or if there are fewer than a majority of all members then serving, by a unanimous vote of all members then serving) that such

waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the financial company to United States financial stability.

(2) NOTICE.—The Agency shall provide notice of a waiver or modification under this paragraph to the financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Agency shall allow a financial company to request in writing an opportunity for a written or oral hearing before the Agency to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Agency shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Agency, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Agency shall notify the subject financial company of the final determination

of the Agency under this paragraph, which shall contain a statement of the basis for the decision of the Agency.

(f) CONSULTATION.—The Agency shall consult with the primary financial regulatory agency, if any, for each financial company or subsidiary of a financial company that is being considered for designation as a specified financial company under this section before the Agency makes any final determination with respect to such financial company or subsidiary under subsection (a), (b), or (c).

SEC. 106. REGISTRATION WITH FIRA BY SPECIFIED FINANCIAL COMPANIES.

(a) IN GENERAL.—Not later than 180 days after the date of a final Agency determination under section 105 that a financial company is a specified financial company, such specified financial company (other than a specified bank holding company or another financial company that is already registered with FIRA) shall register with FIRA, on forms prescribed by FIRA, which shall include such information as FIRA, in consultation with the Agency, may deem necessary or appropriate to carry out this title.

(b) AUTHORITY TO EXTEND.—The Agency may, in its discretion, extend the time period within which a specified financial company shall—

(1) register under this section and file the requisite information; or

(2) comply with the standards prescribed by the Agency under this title.

SEC. 107. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR SPECIFIED FINANCIAL COMPANIES.

(a) PURPOSE.—In order to prevent or mitigate risks to United States financial system stability and economic growth that could arise from the material financial distress or failure of large or complex financial institutions, the Agency shall establish prudential standards and reporting and disclosure requirements applicable to specified financial companies that—

(1) are more stringent than those applicable to financial companies that do not present similar risks to United States financial system stability and economic growth; and

(2) increase in stringency with the size and complexity of the specified financial company.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The Agency shall, by regulation, establish prudential standards for specified financial companies that shall include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) a contingent capital requirement;

(E) resolution plan and credit exposure report requirements;

(F) prompt corrective action requirements;

(G) concentration limits; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to specified foreign financial companies, the Agency shall give due regard to the principle of national treatment and equality of competitive opportunity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Agency shall—

(A) take into account differences among specified financial companies, based on—

(i) the factors described in subsections (a) and (b) of section 105;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Agency determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 105 would not result in sharp, discontinuous changes in the prudential standards established pursuant paragraphs (1) and (2) of this subsection.

(4) WELL CAPITALIZED AND WELL MANAGED.—The Agency shall require specified financial companies to be well capitalized and well managed, at all times.

(5) RISK COMMITTEE.—

(A) IN GENERAL.—The Agency shall require each specified financial company that is a publicly traded company to establish a risk committee, as set forth in subparagraph (B), not later than 1 year after the date of receipt of a notice of final determination pursuant to section 105(d)(3) with respect to such specified financial company.

(B) RISK COMMITTEE.—The risk committee shall—

(i) be responsible for the oversight of the enterprise-wide risk management practices of the specified financial company;

(ii) include such number of independent directors as the Agency may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the specified financial company; and

(iii) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(C) RULEMAKING.—The Agency shall issue final rules to carry out this paragraph, not later than 1 year after the date of enactment of this Act.

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to direct or authorize the Agency to establish risk management standards, or to require the use of a single generally accepted risk management standard over any other similarly recognized standard.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—The Agency shall promulgate regulations that require specified financial companies to maintain a minimum amount of long-term hybrid debt that is convertible to equity when—

(A) a specified financial company fails to meet prudential standards established by the Agency; and

(B) the Agency has determined that threats to United States financial system stability make such a conversion necessary.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Agency shall consider—

(A) an appropriate transition period for implementation of a conversion under this subsection;

(B) the factors described in subsection (b)(3)(A);

(C) capital requirements applicable to the specified financial company and its subsidiaries; and

(D) any other factor that the Agency deems appropriate.

SEC. 108. HEIGHTENED STANDARDS FOR BANK HOLDING COMPANIES THAT ARE NOT SPECIFIED FINANCIAL COMPANIES.

(a) IN GENERAL.—Subject to the limitation in subsection (b), the Agency shall, by regulation, establish heightened standards for bank holding companies that are not specified financial companies, which shall include—

(1) risk-based capital requirements;

(2) leverage limits; and

(3) liquidity requirements.

(b) LIMITATION.—The Agency may not establish heightened standards under subsection (a) for any bank holding company that has total assets of less than $10,000,000,000.

(c) CONSIDERATIONS.—In prescribing heightened standards under subsection (a), the Agency shall—

(1) take into account differences among bank holding companies, based on—

(A) any factor described in subsections (a) and (b) of section 105, if applicable; and

(B) any other factors that the Agency determines appropriate;

(2) establish such standards on a graduated basis; and

(3) to the extent possible, ensure that small changes in the factors listed in subsections (a) and

(b) of section 105 would not result in sharp, discontinuous changes in the standards established pursuant to subsection (a).

(d) RISK COMMITTEE.—

(1) REGULATIONS.—

(A) REQUIRED REGULATIONS.—The Agency shall promulgate regulations to require each bank holding company that (i) is not a specified financial company, (ii) is a publicly traded company, and (iii) has total assets of greater than or equal to $10,000,000,000, to establish a risk committee as set forth in paragraph (2).

(B) PERMISSIVE REGULATIONS.—The Agency may promulgate regulations to require each bank holding company that (i) is not a specified financial company, (ii) is a publicly traded company, and (iii) has total assets of less than $10,000,000,000, to establish a risk committee as set forth in paragraph (2).

(2) RISK COMMITTEE.—Each risk committee established pursuant to this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the bank holding company;

(B) include such number of independent directors as the Agency may determine appropriate based on the nature of operations, size of assets, and other appropriate criteria related to the bank holding company; and

(C) include at least one risk management expert with experience in identifying, assessing, and managing risk exposures.

(3) RULEMAKING.—

(A) TIMING.—Not later than 1 year after the date of the enactment of this Act, the Agency shall issue final rules to carry out this subsection.

(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to direct or authorize the Agency to establish risk management standards, or to require the use of a single generally accepted risk management standard over any other similarly recognized standard.

SEC. 109. REPORTS, EXAMINATIONS, AND PUBLIC DISCLOSURES.

(a) REPORTS.—

(1) IN GENERAL.—Subject to paragraph (2), the Agency may require specified financial compa-

nies, and any subsidiary thereof, to submit certified reports to keep the Agency informed as to—

(A) the financial condition of the company, systems for monitoring and controlling financial, operating, and other risks, transactions with any depository institution subsidiaries, and the extent to which the activities and operations of the company and its subsidiaries could, under adverse circumstances, have the potential to disrupt financial markets or affect overall financial stability; and

(B) compliance by the company or its subsidiaries with applicable provisions of this title.

(2) USE OF EXISTING REPORTS.—

(A) IN GENERAL.—For purposes of compliance with paragraph (1), the Agency shall, to the fullest extent possible, use—

(i) reports that a specified financial company or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(ii) information that is otherwise required to be reported publicly; and

(iii) externally audited financial statements.

(B) AVAILABILITY.—Each specified financial company, and any subsidiary thereof, shall provide to the Agency, at the request of the Agency, copies of all reports referred to in subparagraph (A).

(3) ENHANCED PUBLIC DISCLOSURES.—The Agency may prescribe, by regulation, periodic public disclosures by specified financial companies in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(b) APPROVAL OF RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Agency shall require each specified financial company to report periodically to the Agency, FIRA, and the Corporation the plan of the specified financial company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Agency shall require each specified financial company to report periodically to the Agency, FIRA, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other bank holding companies or financial companies; and

(B) the nature and extent to which other bank holding companies or financial companies have credit exposure to that company.

(3) REVIEW AND DETERMINATION.—FIRA and the Corporation shall—

(A) review the information provided in accordance with this section by each specified financial company; and

(B) jointly determine if, based on all available information, the resolution plan required under paragraph (1) is credible and would facilitate an orderly resolution of the specified financial company under title 11, United States Code, or title II of this Act.

(4) NOTICE OF DEFICIENCIES.—If FIRA and the Corporation jointly determine pursuant to subparagraph (3)(B) that the resolution plan of a specified financial company is not credible or would not facilitate an orderly resolution of the specified financial company under title 11, United States Code, or title II of this Act—

(A) FIRA and the Corporation shall notify the specified financial company of the deficiencies in the resolution plan; and

(B) the specified financial company shall resubmit the resolution plan within a time frame determined by the Agency, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, or title II of this Act, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a specified financial company fails to resubmit the resolution plan within the time frame established by the Agency, with such revisions as are required under subparagraph (4)(B), FIRA and the Corporation may jointly impose more stringent capital, leverage, and liquidity requirements and restrictions on the growth, activities, and operations of the specified financial company or any of its subsidiaries, until such time as the specified financial company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—FIRA and the Corporation, in consultation with the Agency, may direct a specified financial company, by order, to divest certain assets or operations identified by FIRA and the Corporation, to facilitate an orderly resolution of the specified financial company under title 11, United States Code, or title II of this Act in the event of its failure, in any case in which—

(i) FIRA and the Corporation have jointly imposed more stringent requirements on the specified financial company pursuant to subparagraph (A); and

(ii) the specified financial company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Agency shall issue final rules implementing this subsection.

SEC. 110. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this title shall be construed to require a specified financial company to conform its activities to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—If a specified financial company conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Agency may require the specified financial company to establish and conduct all activities that are determined to be financial in nature or incidental thereto under that section 4(k) in an intermediate holding company established pursuant to regulation of the Agency, not later than 90 days after the date on which the specified financial company was notified of the determination under section 105(a).

(c) REGULATIONS.—The Agency shall promulgate regulations to establish—

(1) the criteria for determining whether to require a specified financial company to establish an intermediate holding company under subsection (b); and

(2) any restrictions or limitations on transactions between such intermediate holding company and its affiliates.

SEC. 111. PROMPT CORRECTIVE ACTION FOR SPECIFIED FINANCIAL COMPANIES.

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

(1) CAPITAL CATEGORIES.—

(A) WELL CAPITALIZED.—A specified financial company is ''well capitalized'' if it exceeds the required minimum level for each relevant capital measure, as established by the Agency.

(B) UNDERCAPITALIZED.—A specified financial company is ''undercapitalized'' if it fails to meet the required minimum level for any relevant capital measure, as established by the Agency.

(C) SIGNIFICANTLY UNDERCAPITALIZED.—A specified financial company is ''significantly undercapitalized'' if it is significantly below the required minimum level for any relevant capital measure, as established by the Agency.

(D) CRITICALLY UNDERCAPITALIZED.—A specified financial company is ''critically undercapitalized'' if it fails to meet any level specified in subsection (c)(3)(A).

(2) OTHER DEFINITIONS.—

(A) AVERAGE.—The ''average'' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period, divided by the total number of business days in that period.

(B) CAPITAL DISTRIBUTION.—The term ''capital distribution'' means—

(i) a distribution of cash or other property by a specified financial company to its owners, made on account of that ownership, but not including any dividend consisting only of shares of the specified financial company or rights to purchase such shares;

(ii) a payment by a specified financial company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance acquisition of those shares or interests by any person; or

(iii) a transaction that the Agency or FIRA determines, by order or regulation, to be in substance a distribution of capital

to the owners of the specified financial company.

(C) CAPITAL RESTORATION PLAN.—The term ''capital restoration plan'' means a plan required under subsection (e)(2).

(D) COMPENSATION.—The term ''compensation'' includes any payment of money or provision of any other thing of value in consideration of employment.

(E) RELEVANT CAPITAL MEASURE.—The term ''relevant capital measure'' means the measures described in subsection (c).

(F) REQUIRED MINIMUM LEVEL.—The term ''required minimum level'' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the Agency, by regulation.

(G) SENIOR EXECUTIVE OFFICER.—The term ''senior executive officer'' has the same meaning as the term ''executive officer'' in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(b) PROMPT CORRECTIVE ACTION.—FIRA shall, for the purposes of minimizing threats to the stability of the United States financial system and protecting the interest

of taxpayers, take prompt corrective action to resolve the problems of specified financial companies, in accordance with regulations promulgated by the Agency.

(c) CAPITAL STANDARDS.—

(1) RELEVANT CAPITAL MEASURES.—

(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital standards prescribed by the Agency under this section shall include—

(i) a leverage limit; and

(ii) a risk-based capital requirement.

(B) OTHER CAPITAL MEASURES.—The Agency may, by regulation—

(i) establish any additional relevant capital measures to carry out this section; or

(ii) rescind any relevant capital measure required under subparagraph (A), upon determining that the measure is no longer an appropriate means for carrying out this section.

(2) CAPITAL CATEGORIES GENERALLY.—The Agency shall, by regulation, specify for each relevant capital measure the level at which a specified finan-

cial company is well capitalized, undercapitalized, and significantly undercapitalized.

(3) CRITICAL CAPITAL.—

(A) AGENCY TO SPECIFY LEVEL.—

(i) LEVERAGE LIMIT.—The Agency shall, by regulation, specify the ratio of tangible equity to total assets at which a specified financial company is critically undercapitalized.

(ii) OTHER RELEVANT CAPITAL MEASURES.—The Agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which a specified financial company is critically undercapitalized.

(B) LEVERAGE LIMIT RANGE.—The level specified under subparagraph (A)(i) shall require tangible equity in an amount that is equal to—

(i) not less than 2 percent of total assets of the specified financial company; and

(ii) except as provided in clause (i), not more than 65 percent of the required

minimum level of capital under the leverage limit.

(d) CAPITAL DISTRIBUTIONS RESTRICTED.—

(1) IN GENERAL.—A specified financial company shall make no capital distribution if, after making the distribution, the specified financial company would be undercapitalized.

(2) EXCEPTION.—Notwithstanding paragraph (1), FIRA may permit a specified financial company to repurchase, redeem, retire, or otherwise acquire shares or ownership interests, if the repurchase, redemption, retirement, or other acquisition—

(A) is made in connection with the issuance of additional shares or obligations of the specified financial company in at least an equivalent amount; and

(B) will reduce the financial obligations of, or otherwise improve the financial condition of, the specified financial company.

(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED COMPANIES.—

(1) MONITORING REQUIRED.—FIRA shall—

(A) closely monitor the condition of any specified financial company that is undercapitalized;

(B) closely monitor compliance by any specified financial company that is undercapitalized with capital restoration plans, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to any specified financial company that is undercapitalized to determine whether the plan, restrictions, and requirements are effective.

(2) CAPITAL RESTORATION PLAN REQUIRED.—

(A) IN GENERAL.—Any specified financial company that is undercapitalized shall submit an acceptable capital restoration plan to FIRA within the time allowed by FIRA under subparagraph (D).

(B) CONTENTS OF PLAN.—The capital restoration plan required by subparagraph (A) shall—

(i) specify—

(I) the steps that the specified financial company will take to become well capitalized;

(II) the levels of capital to be attained by the specified financial com-

pany during each year in which the plan will be in effect;

(III) how the specified financial company will comply with the restrictions or requirements then in effect under this section; and

(IV) the types and levels of activities in which the specified financial company will engage; and

(ii) contain such other information as FIRA may require.

(C) CRITERIA FOR ACCEPTING PLAN.—FIRA shall not accept a capital restoration plan for purposes of this paragraph, unless FIRA determines that the plan—

(i) complies with subparagraph (B);

(ii) is based on realistic assumptions, and is likely to succeed in restoring the capital of the specified financial company; and

(iii) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the specified financial company is exposed.

(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—FIRA shall, by regulation, establish deadlines that—

(i) provide specified financial companies with reasonable time to submit capital restoration plans, but in no case later than 45 days after the date on which the specified financial company becomes undercapitalized; and

(ii) require FIRA to act on capital restoration plans expeditiously, but in no case later than 60 days after the date on which the plan is submitted.

(3) ASSET GROWTH RESTRICTED.—A specified financial company that is undercapitalized may not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, unless—

(A) FIRA has accepted the capital restoration plan of the specified financial company;

(B) any increase in total assets is consistent with the plan; and

(C) the specified financial company ratio of tangible equity to total assets increases during the calendar quarter at a rate that is sufficient

to enable it to become well capitalized within a reasonable time.

(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS AND NEW LINES OF BUSINESS.—A specified financial company that is undercapitalized may not, directly or indirectly, acquire any interest in any company or insured depository institution, or engage in any new line of business, unless—

(A) FIRA has accepted the capital restoration plan of the specified financial company, the specified financial company is implementing the plan, and FIRA determines that the proposed action is consistent with and will further achievement of the plan;

(B) FIRA determines that the specific proposed action is appropriate; or

(C) FIRA has exempted the specified financial company from the requirements of this paragraph with respect to the class of acquisitions that includes the proposed action.

(5) DISCRETIONARY SAFEGUARDS.—FIRA may, with respect to any specified financial company that is undercapitalized, take actions described in any subparagraph of subsection (f)(2), if FIRA determines that those actions are necessary to restore the

specified financial company to well capitalized status.

(f) SIGNIFICANTLY UNDERCAPITALIZED COMPANIES AND UNDERCAPITALIZED COMPANIES THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(1) IN GENERAL.—This subsection shall apply with respect to any specified financial company—

(A) that is significantly undercapitalized; or

(B) that—

(i) is undercapitalized; and

(ii) fails—

(I) to submit an acceptable capital restoration plan within the time allowed by FIRA under subsection (e)(2)(D); or

(II) in any material respect, to implement a capital restoration plan acceptable to FIRA.

(2) SPECIFIC ACTIONS AUTHORIZED.—

(A) IN GENERAL.—FIRA shall carry out this subsection by taking 1 or more of the actions described in subparagraphs (B) through (H).

(B) REQUIRING RECAPITALIZATION.—FIRA may—

(i) require the specified financial company to sell enough of its shares or obligations so that the specified financial company will be well capitalized after the sale;

(ii) further require instruments sold under clause (i) to be voting shares; or

(iii) require the specified financial company to be acquired by or combine with another company.

(C) RESTRICTING TRANSACTIONS WITH AFFILIATES.—FIRA may—

(i) require the specified financial company to comply with section 23A of the Federal Reserve Act (12 U.S.C. 371c), as if it were a member bank; and

(ii) further restrict the transactions of the specified financial company with affiliates and insiders.

(D) RESTRICTING ASSET GROWTH.—FIRA may restrict the asset growth of the specified financial company more stringently than as specified in subsection (e)(3), or require it to reduce its total assets.

(E) RESTRICTING ACTIVITIES.—FIRA may require the specified financial company or any of its subsidiaries to alter, reduce, or terminate any activity that FIRA determines poses excessive risk to the specified financial company.

(F) IMPROVING MANAGEMENT.—FIRA may—

(i) order a new election for the board of directors of the specified financial company;

(ii) require the specified financial company to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the date on which the specified financial company became undercapitalized, except that a dismissal under this clause shall not be construed to be a removal under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818); or

(iii) require the specified financial company to employ qualified senior executive officers (who, if FIRA so specifies, shall be subject to approval by FIRA).

(G) REQUIRING DIVESTITURE.—FIRA may require the specified financial company to divest itself of or liquidate any subsidiary, if FIRA determines that the subsidiary is in danger of becoming insolvent, poses a significant risk to the specified financial company, or is likely to cause a significant dissipation of the assets or earnings of the specified financial company.

(H) REQUIRING OTHER ACTION.—FIRA may require the specified financial company to take any other action that FIRA determines will better carry out the purpose of this section than any other action or combination of actions authorized by this paragraph.

(3) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with paragraph (2), FIRA shall, unless FIRA determines that such action would not be appropriate, take the action authorized in—

(A) clause (i) or (iii) of paragraph (2)(B); and

(B) paragraph (2)(C)(i).

(4) SENIOR EXECUTIVE OFFICER COMPENSATION RESTRICTED.—

(A) IN GENERAL.—The specified financial company may not, without the prior written approval of FIRA—

(i) pay any bonus to any senior executive officer; or

(ii) provide compensation to any senior executive officer at a rate exceeding the average rate of compensation (excluding bonuses, stock options, and profit-sharing) of that officer during the 12 calendar months preceding the calendar month in which the specified financial company became undercapitalized.

(B) FAILURE TO SUBMIT PLAN.—FIRA may not grant any approval under subparagraph (A) with respect to a specified financial company that has failed to submit an acceptable capital restoration plan in accordance with this section.

(5) CONSULTATION WITH OTHER REGULATORS.—Before FIRA makes a determination under paragraph (2)(F) with respect to a subsidiary that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, FIRA shall consult

with the Commission and, in the case of any other subsidiary which is subject to any financial responsibility or capital requirement, the primary financial regulatory agency for such subsidiary, if any, with respect to the proposed determination of FIRA, and actions pursuant to such determination.

(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

(1) IN GENERAL.—If FIRA determines (after notice and an opportunity for hearing) that a specified financial company is in an unsafe or unsound condition or, pursuant to section 8(b)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(8)), deems the specified financial company to be engaging in an unsafe or unsound practice, FIRA may—

(A) if the specified financial company is well capitalized, require the specified financial company to comply with one or more provisions of subsections (d) and (e), as if the specified financial company were undercapitalized; or

(B) if the specified financial company is undercapitalized, take any one or more actions authorized under subsection (f)(2), as if the specified financial company were significantly undercapitalized.

(2) CONTENTS OF PLAN.—A plan that may be required pursuant to paragraph (1)(A) shall specify the steps that the specified financial company will take to correct the unsafe or unsound condition or practice.

(h) MANDATORY BANKRUPTCY PETITION OR RESOLUTION FOR CRITICALLY UNDERCAPITALIZED COMPANIES.—FIRA, in consultation with the Corporation, shall, not later than 90 days after the date on which a specified financial company becomes critically undercapitalized—

(1) require the specified financial company to file a petition for bankruptcy under section 301 of title 11, United States Code;

(2) file a petition for involuntary bankruptcy on behalf of a specified financial company under section 303 of title 11, United States Code; or

(3) submit a written recommendation pursuant to section 202 with respect to the specified financial company.

(i) IMPLEMENTATION.—FIRA shall prescribe such regulations, issue such orders, and take such other actions as FIRA determines to be necessary to carry out this section.

(j) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Agency, FIRA,

any other Federal regulatory agency, or a State to take action in addition to (but not in derogation of) that required under this section.

(k) CONSULTATION.—The Agency, FIRA, and the Secretary shall consult with their foreign counterparties and through appropriate multilateral organizations to reach agreement to extend comprehensive and robust prudential supervision and regulation to all highly leveraged and substantially interconnected financial companies. In their regulation and supervision of specified foreign financial companies, the Agency and FIRA shall take into account the extent to which such companies are subject to standards comparable to those applied to other specified U.S. nonbank financial companies.

(l) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(1) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) may obtain review of that order by filing a written petition for reinstatement with FIRA, not later than 10 days after the date of receipt of notice of the dismissal.

(2) PROCEDURE.—

(A) HEARING REQUIRED.—FIRA shall give a petitioner under this paragraph an opportunity—

(i) to submit written materials in support of the petition; and

(ii) to appear, personally or through counsel, before 1 or more members of FIRA or designated employees of FIRA.

(B) DEADLINE FOR HEARING.—FIRA shall—

(i) schedule the hearing authorized by subparagraph (A)(ii) promptly after a petition is filed under this paragraph; and

(ii) hold the hearing not later than 30 days after the date on which the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing under this paragraph, the Agency shall—

(i) by order, grant or deny the petition;

(ii) if the order is adverse to the petitioner, set forth the basis for the order; and

(iii) notify the petitioner of the order.

(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the continued employment of the petitioner would materially strengthen the ability of the specified financial company—

(A) to become well capitalized, to the extent that the order is based on the capital level of or failure to submit or implement a capital restoration plan by the specified financial company; and

(B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1).

(m) ENFORCEMENT AUTHORITY FOR SPECIFIED FOREIGN FINANCIAL COMPANY.—

(1) TERMINATION AUTHORITY.—If FIRA determines that a condition, practice, or activity of a specified foreign financial company does not comply with this title or the rules or orders prescribed by the Agency under this title, or otherwise poses a threat to United States financial stability, FIRA may, after notice and opportunity for a hearing, order a specified foreign financial company that op-

erates a branch, agency, or subsidiary in the United States to terminate the activities of such branch, agency, or subsidiary.

(2) DISCRETION TO DENY HEARING.—FIRA may issue an order under paragraph (1) without providing for an opportunity for a hearing, if FIRA determines that expeditious action is necessary in order to protect the public interest.

(n) AUTHORITY TO FILE INVOLUNTARY PETITION FOR BANKRUPTCY.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(m)(1) Notwithstanding subsections (a) and (b) of this section, an involuntary case may be commenced by the Financial Institutions Regulatory Administration against a specified financial company, on the ground that the specified financial company is critically undercapitalized.

''(2) For purposes of this subsection, the terms 'bank holding company', 'specified financial company', and 'critically undercapitalized' have the same meanings as in sections 102 and 111 of the Restoring American Financial Stability Act of 2009.''.

SEC. 112. CONCENTRATION LIMITS.

(a) STANDARDS.—In order to limit the risks that the failure of any specified financial company could pose to any other specified financial company and to the stability of the United States financial system, the Agency, by regulation, shall prescribe standards that limit such risks.

(b) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Agency under subsection (a) shall prohibit each specified financial company from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Agency may determine by regulation to be necessary to mitigate risks to financial stability) of the specified financial company.

(c) CREDIT EXPOSURE.—For purposes of subsection (b), ''credit exposure'' to a company means—

(1) all extensions of credit to the company, including loans, deposits, and lines of credit;

(2) all repurchase agreements and reverse repurchase agreement with the company;

(3) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the specified financial company;

(4) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(5) all purchases of or investment in securities issued by the company;

(6) counterparty credit exposure to the company in connection with a derivative transaction between the specified financial company and the company; and

(7) any other similar transactions that the Agency, by regulation, determines to be a credit exposure for purposes of this section.

(d) ATTRIBUTION RULE.—For purposes of this section, any transaction by a specified financial company with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to that company.

(e) RULEMAKING.—The Agency may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this section.

(f) EXEMPTIONS.—The Agency may, by regulation or order, exempt transactions, in whole or in part, from the definition of ''credit exposure'', if the Agency finds that

the exemption is in the public interest and is consistent with the purpose of this section.

(g) TRANSITION PERIOD.—This section and any regulations and orders of the Agency under this section shall not be effective until 3 years after the date of enactment of this section. The Agency may extend such period for up to an additional 2 years to promote financial stability.

SEC. 113. REGULATIONS.

Not later than 18 months after the date of enactment of this Act, the Agency shall issue final regulations to implement this title, including—

(1) detailed criteria for determining whether a financial company should be designated as a specified financial company for purposes of this title;

(2) the procedures for collecting information from financial companies to make such determinations; and

(3) the procedures that a financial company shall follow to request a hearing on the decisions of the Agency.

SEC. 114. AVOIDING DUPLICATION.

The Agency shall take any action that the Agency deems appropriate to avoid imposing requirements under this title that are duplicative of requirements applicable to financial companies under other provisions of law.

SEC. 115. AGENCY FUNDING.

(a) FINANCIAL STABILITY FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the ''Financial Stability Fund''.

(2) FUND RECEIPTS.—All amounts provided to the Agency under subsection (c), and all supervisory assessments that the Agency receives under subsection (d) shall be deposited into the Financial Stability Fund.

(3) INVESTMENTS AUTHORIZED.—

(A) AMOUNTS IN FUND MAY BE INVESTED.—The Chairperson may request the Secretary to invest the portion of the Financial Stability Fund that is not, in the judgment of the Chairperson, required to meet the needs of the Agency.

(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Stability Fund, as determined by the Chairperson.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from

the sale or redemption of, any obligations held in the Financial Stability Fund shall be credited to and form a part of the Financial Stability Fund.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Stability Fund shall be immediately available to the Agency, and shall remain available until expended, to pay the expenses of the Agency in carrying out its duties and responsibilities.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to or credited to the Financial Stability Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Stability Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority or for any other purpose.

(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of

Governors shall provide to the Agency an amount sufficient to cover the expenses of the Agency.

(d) PERMANENT SELF-FUNDING.—

(1) IN GENERAL.—Beginning 2 years after the date of enactment of this Act, the Agency shall establish, by regulation, an assessment schedule, including the assessment base and rates applicable to specified financial companies, that takes into account differences among specified financial companies, based on the considerations for establishing the prudential standards under section 107(b)(3)(B), to recoup the total expenses of the Agency to the maximum extent possible.

(2) SHORTFALL.—To the extent that the assessments under paragraph (1) do not fully recoup the total expenses of the Agency, the Board of Governors shall provide to the Agency an amount sufficient to cover the shortfall.

SEC. 116. RESOLUTION OF DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Agency shall resolve a dispute among 2 or more member agencies if—

(1) a member agency has a dispute with another member agency about the respective jurisdic-

tion over a particular financial company or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Agency;

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of its intent to request dispute resolution by the Agency; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Agency resolve the dispute.

(b) AGENCY DECISION.—The Agency shall decide the dispute—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—An Agency decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 117. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Agency may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 107 and 108, for a financial activity or practice conducted by financial companies under their respective jurisdictions, if the Agency determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial companies or United States markets.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—

(A) IN GENERAL.—The Agency shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term financial and economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk-management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency is authorized to impose, re-

quire reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—Standards imposed under this subsection shall be the standards recommended by the Agency in accordance with subsection (a), or any other similar standards that the Agency deems acceptable, after consultation between the Agency and the primary financial regulatory agency.

(d) REPORT TO CONGRESS.—The Agency shall report to Congress on—

(1) any recommendations by the Agency issued under this section;

(2) the implementation or failure to implement such recommendation on the part of the a primary financial regulatory agency; and

(3) in such cases where no appropriate primary financial regulatory agency exists for the financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the United States financial system.

SEC. 118. EFFECT OF RESCISSION OF IDENTIFICATION.

(a) NOTICE.—If the Agency determines that a specified financial company, activity or practice no longer requires any heightened standards implemented under this title, including standards imposed under section 107, 108, or 117, the Agency shall inform the relevant primary financial regulatory agency or agencies of that finding.

(b) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—A primary financial regulatory agency that has imposed heightened standards for financial stability purposes under this title shall determine whether standards that it has imposed under this title should remain in effect.

SEC. 119. MITIGATION OF SYSTEMIC RISK.

(a) IN GENERAL.—If the Agency determines, after consultation with FIRA and after notice and an opportunity for hearing, that the size of a specified financial company or the scope or nature of activities directly or indirectly conducted by a specified financial company poses a threat to the safety and soundness of the specified financial company or to the financial stability of the United States, the Agency, in consultation with FIRA, may require the specified financial company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities, to terminate one or more activities, or to impose conditions on the manner in which the specified financial company conducts one or more activities.

(b) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Agency shall prescribe regulations regarding the application of heightened standards under this title to foreign nonbank financial companies and companies that own or control a Federal or State branch, subsidiary, or operating entity that is a specified financial company, giving due regard to the principle of national treatment and equality of competitive opportunity.

SEC. 120. RULE OF CONSTRUCTION.

Any regulation or standard imposed by the Agency under this title shall supersede any conflicting, less strin-

gent requirements of the primary financial regulatory agency, but only to the extent of the conflict.

TITLE II—ENHANCED RESOLUTION AUTHORITY

SEC. 201. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) APPROPRIATE FEDERAL REGULATORY AGENCY.—

(A) CORPORATION AND COMMISSION.—The term ''appropriate Federal regulatory agency'' means—

(i) the Corporation; and

(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) (other than an insured depository institution).

(B) RULES OF CONSTRUCTION.—More than 1 agency may be an appropriate Federal regulatory agency with respect to any given financial company, in which case—

(i) the Commission shall be the appropriate Federal regulatory agency for purposes of section 202, if the largest subsidiary of the financial company is a broker or dealer, as measured by total assets as of the end of the previous calendar quarter; and

(ii) otherwise the Corporation shall be the appropriate Federal regulatory agency for purposes of section 202.

(2) BRIDGE FINANCIAL COMPANY.—The term ''bridge financial company'' means a new financial company organized in accordance with section 208(h) by the Corporation.

(3) COVERED FINANCIAL COMPANY.—The term ''covered financial company'' means a financial company for which a determination has been made pursuant to and in accordance with section 202(b).

(4) COVERED SUBSIDIARY.—The term ''covered subsidiary'' means a subsidiary described in paragraph (10)(B)(iv).

(5) CUSTOMER PROPERTY.—The term ''customer property'' has the meaning ascribed to it in the Securities Investor Protection Act of 1970.

(6) FINANCIAL COMPANY.—The term ''financial company'' means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State; and

(B) is—

(i) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any specified financial company, as defined in section 102;

(iii) any company that is predominantly engaged in activities that are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956; or

(iv) any subsidiary of any company described in clauses (i) through (iii) (other than an insured depository institution, any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), that is a member of the Securities

Investor Protection Corporation, or an insurance company).

(7) FUND.—The term ''Fund'' means the Systemic Resolution Fund established in accordance with section 208(n).

(8) SPECIFIED FINANCIAL COMPANY.—The term ''specified financial company'' means a financial company subject to heightened prudential standards, as defined in section 102.

(9) INSURANCE COMPANY.—The term ''insurance company'' means a domestic insurance company, as that term is defined for purposes of title 11, United States Code.

SEC. 202. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION AND DETERMINATION.—

(1) VOTE REQUIRED.—

(A) IN GENERAL.—Subject to subparagraph (B), FIRA and the Corporation, at the request of the Secretary, the Chairperson of the FIRA Board, or the Chairperson of the Agency, or on their own initiative, shall consider whether to make the written recommendation authorized in paragraph (2) with respect to a specified financial company. Such recommendation shall

be made upon a vote of not less than two-thirds of the members of the FIRA Board then serving and two-thirds of the members of the board of directors of the Corporation then serving.

(B) CASES INVOLVING BROKERS OR DEALERS.—In any case in which a financial company has a broker or a dealer as its largest subsidiary, as measured by total assets as the end of the previous calendar quarter, the Commission and FIRA, at the request of the Secretary or the Chairman of the FIRA Board, or on their own initiative, shall consider whether to make the written recommendation authorized in paragraph (2) with respect to a specified financial company. Such recommendation shall be made upon a vote of not less than two-thirds of the members of the FIRA Board then serving and the members of the Commission then serving.

(2) RECOMMENDATION REQUIRED.—Any written recommendation pursuant to paragraph (1) shall contain—

(A) an evaluation of whether the specified financial company is in default or in danger of default;

(B) a description of the effect that the default of the specified financial company would have on economic conditions or financial stability in the United States; and

(C) a recommendation regarding the nature and the extent of actions to be taken under section 203 regarding the specified financial company.

(b) DETERMINATION BY THE SECRETARY.—Notwithstanding any other provision of Federal or State law, if, upon a written recommendation as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

(1) the specified financial company is in default or in danger of default;

(2) the failure of the specified financial company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and

(3) any action under section 203 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of the action in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the

Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the specified financial company;

then the Secretary shall take action in accordance with section 203(a); the Corporation shall take action in accordance with section 203(b), and the Corporation may take 1 or more actions specified in section 203(c).

(c) DOCUMENTATION AND REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) document any determination under subsection (b); and

(B) retain the documentation for review under paragraph (2).

(2) GAO REVIEW.—The Comptroller General of the United States shall review and report to Congress on any determination under subsection (b), including—

(A) the basis for the determination;

(B) the purpose for which any action was taken pursuant thereto; and

(C) the likely effect of the determination and such action on the incentives and conduct of specified financial companies and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Not later than 30 days after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, including a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a specified financial company shall be considered to be in default or in danger of default if, as determined in accordance with subsection (b)—

(1) a case has been, or likely will promptly be, commenced with respect to the specified financial company under title 11, United States Code;

(2) the specified financial company is critically undercapitalized, as such term has been or may be defined by the Agency under section 111;

(3) the specified financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 203;

(4) the assets of the specified financial company are, or are likely to be, less than its obligations to creditors and others; or

(5) the specified financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

SEC. 203. RESOLUTION; STABILIZATION.

(a) APPOINTMENT OF RECEIVER.—Upon the Secretary making a determination in accordance with section 202(b), the Secretary shall appoint the Corporation as receiver for the covered financial company.

(b) CONSULTATION.—The Corporation, as receiver—

(1) shall consult with the primary financial regulatory agency of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly resolution of the covered financial company;

(2) may consult with, or under section 208(a)(1)(B)(v) or section 208(a)(1)(K), acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the resolution process; and

(3) shall consult with the primary financial regulatory agencies of any subsidiaries of the covered financial company that are not covered subsidiaries,

and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

(c) EMERGENCY STABILIZATION AFTER APPOINTMENT OF RECEIVER.—Upon the appointment by the Secretary of the Corporation as receiver under subsection (a), the Corporation may, in its corporate capacity and as an agency of the United States, with the approval of the Secretary and subject to the conditions in subsections (d) and (e), under such terms and conditions as the Corporation deems appropriate—

(1) make loans to, or purchase any debt obligation of, the covered financial company or any covered subsidiary;

(2) purchase or guarantee against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

(3) assume or guarantee the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

(4) acquire any type of equity interest or security of the covered financial company or any covered subsidiary;

(5) take a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any transactions conducted under this subsection; or

(6) sell or transfer all, or any part, of such acquired assets, liabilities, obligations, equity interests, or securities of the covered financial company or any covered subsidiary.

(d) MANDATORY TERMS AND CONDITIONS FOR ALL STABILIZATION ACTIONS.—The Corporation, as receiver, is authorized to take the stabilization actions listed in subsection (c), only if—

(1) the Corporation, with the written approval of the Secretary, determines that such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company;

(2) the Corporation ensures that the shareholders of a covered financial company do not receive payment until after all other claims are fully paid;

(3) the Corporation ensures that taking any action listed in subsection (c) will not prevent unsecured creditors from bearing losses; and

(4) the Corporation ensures that management responsible for the failed condition of the covered financial company is removed (if such management has not already been removed at the time at which the Corporation is appointed receiver).

(e) RECOUPMENT OF FUNDS EXPENDED FOR SYSTEMIC STABILIZATION PURPOSES.—Amounts expended from the Fund by the Corporation under this section shall be repaid in full to the Fund from—

(1) amounts received through the resolution process, including—

(A) the proceeds of the sale of, or income from, the assets of the covered financial company; and

(B) the proceeds of the transfer of any securities obtained under subsection (c); and

(2) if the sources described in paragraph (1) are insufficient to repay the amount of the stabilization action in full, the difference shall be recouped through assessments on financial companies in accordance with section 208(o).

SEC. 204. JUDICIAL REVIEW.

If the Corporation is appointed receiver for a covered financial company, the covered financial company, may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the receiver be removed, and the court shall, upon the merits, dismiss such action or direct the receiver to be removed. Review of such an action shall be limited to the appointment of a receiver under section 203.

SEC. 205. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered financial company shall not be liable to the shareholders or creditors thereof for acquiescing in or consenting in good faith to—

(1) the appointment of the Corporation as receiver for the covered financial company under section 203; or

(2) an acquisition, combination, or transfer of assets or liabilities under section 208.

SEC. 206. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

The Corporation as receiver for a covered financial company under this title shall immediately, and by operation of law, terminate any case commenced with respect to the covered financial company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered financial company, and no such case or proceeding may be commenced with respect to the covered financial company at any time while the Corporation acts as receiver for the covered financial company.

SEC. 207. RULEMAKING.

The Corporation may, in consultation with the Agency, prescribe such rules or regulations as the Corporation considers necessary or appropriate to implement this title.

SEC. 208. POWERS AND DUTIES OF THE CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under section 203, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company, and

of any stockholder, member, officer, or director of such institution with respect to the covered financial company and the assets of the covered financial company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATION OF THE COVERED FINANCIAL COMPANY.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) preserve and conserve the assets and property of the covered financial company; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—

(i) IN GENERAL.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(ii) PRESUMPTION.—There shall be a strong presumption that the Corporation, as receiver for a covered financial company, will remove management responsible for the failed condition of the covered financial company (if such management has not already been removed at the time at which the Corporation is appointed as receiver).

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation may, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests, place

the covered financial company in liquidation and proceed to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company may organize a bridge financial company under subsection (h).

(F) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clause (ii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including assets and liabilities associated with any trust or custody business) without obtaining any approval,

assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a transaction described in clause (i) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request;

(III) if a filing with the Department of Justice or the Federal Trade Commission is required under the Hart-Scott-Rodino Antitrust Improve-

ments Act of 1976, the waiting period shall expire not later than the 30th day following the date of such filing, notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

(G) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(H) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining

and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) under any other provision of law.

(I) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may take any action authorized by this section that the Corporation determines is in the best interests of the covered financial company, its customers, its creditors, its counterparties, or the stability of the United States financial system.

(J) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from a covered financial company, the Corporation, as receiver

for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(K) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, by operation of law, to the rights, titles, powers, and privileges described in subparagraph (A), shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that actions taken under section 203(c) will not prevent shareholders and unsecured creditors from bearing

losses, consistent with the priority of claims provisions in section 208(b).

(L) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate with the appropriate foreign financial authorities regarding the resolution of subsidiaries of the covered financial company that are established in a country other than the United States.

(2) AUTHORITY OF CORPORATION TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver for a covered financial company, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (3).

(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with

proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the covered financial company—

(i) at the last address of the creditor appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the books of the covered financial company, not later than 30 days after the date of the discovery of such name and address.

(3) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subsection (b), the Corporation may prescribe rules and regulations regarding the allowance or disallowance of claims by the Corporation and providing

for administrative determination of claims and review of such determination.

(B) EXISTING RULES.—The Corporation may elect to use the regulations adopted pursuant to section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) with respect to the determination of claims for a covered financial company, as if the covered financial company were an insured depository institution.

(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a covered financial company is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim, and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIM.—The Corporation shall allow any claim received on or before the date specified in the notice published

under paragraph (2)(B)(i) by the Corporation from any claimant which is proved to the satisfaction of the Corporation.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (2)(B)(i), and such claim may be considered by the receiver, if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by

a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a covered financial company which is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered financial company; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered financial company securing any such extension of credit.

(iv) NO JUDICIAL REVIEW OF DETERMINATION.—No court may review the determination of the Corporation pursuant to this subparagraph to disallow a claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the Corporation shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Corporation shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the Corporation

as receiver for the covered financial company.

(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of the appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) TIMING.—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (4)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (4)(A)(i).

(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or continue an action commenced before the date of the appointment of the Corporation as receiver) before the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (4) for any claimant that—

(i) alleges the existence of a legally valid and enforceable or perfected security interest in assets of any covered financial company for which the appropriate Federal

regulatory agency has been appointed as receiver; and

(ii) alleges that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date on which any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (4);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for ex-

pedited relief shall be permitted to file a suit, or to continue such a suit filed before the appointment of the Corporation as receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date on which the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company, and has been since the time of its execution an official record of the company.

(8) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The Corporation as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such

manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Corporation pursuant to a final determination pursuant to paragraph (6); or

(iii) determined by the final judgment of any court of competent jurisdiction.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in the sole discretion of the Corporation, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation (in the capacity of the Corporation as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a cov-

ered financial company following satisfaction by the receiver for the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any non-criminal judicial action or proceeding to which such covered financial company is or becomes a party, for a period not to exceed 90 days.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court having jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the receiver under section 203) and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver for a covered financial company.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Cor-

1 poration may acquire from itself as such
2 receiver; or
3 (ii) any claim relating to any act or
4 omission of such covered financial company
5 or the Corporation as receiver.
6 (E) DISPOSITION OF ASSETS.—In exer-
7 cising any right, power, privilege, or authority
8 as receiver in connection with any covered fi-
9 nancial company for which the Corporation is
10 acting as receiver under this section, the Cor-
11 poration shall, to the greatest extent prac-
12 ticable, conduct its operations in a manner
13 that—
14 (i) maximizes the net present value
15 return from the sale or disposition of such
16 assets;
17 (ii) minimizes the amount of any loss
18 realized in the resolution of cases;
19 (iii) minimizes the cost to the general
20 fund of the Treasury;
21 (iv) mitigates the potential for serious
22 adverse effects to the financial system and
23 the United States economy;

(v) ensures timely and adequate competition and fair and consistent treatment of offerors; and

(vi) prohibits discrimination on the basis of race, sex, or ethnic groups in the solicitation and consideration of offers.

(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of an institution-affiliated party, or any person that the Corporation determines is a debtor of the covered financial company, in property, or any obligation incurred by such party or person, that was made during the 5-year period preceding the date on which the Corporation was appointed receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered financial company or the Corporation.

(B) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), the Corporation may recover, for the benefit of the covered financial company, the prop-

erty transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation may not recover under subparagraph (B)—

(i) any transfer that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Corporation as receiver for a covered financial company under this subsection shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(E) DEFINITION.—For purposes of this paragraph, the term ''institution-affiliated party'' means—

(i) any director, officer, employee, or controlling stockholder of, or agent for, a covered financial company;

(ii) any shareholder, consultant, joint venture partner, and any other person as determined by the Corporation (by regulation or otherwise) who participates in the conduct of the affairs of a covered financial company; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the covered financial company.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request

of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections to the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE COR-

PORATION AS RECEIVER .—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appro-

priate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish retention schedules, as the Corporation determines to be appropriate, regarding the management and disposition of the records of a covered financial company for which the Corporation is appointed as receiver, with due regard for—

(I) the costs and other burdens imposed on the receiver by the maintenance of such records;

(II) the avoidance of duplicative record retention; and

(III) the expected evidentiary needs of the Corporation as receiver, and the public regarding the records of failed insured depository institutions.

(ii) OLD RECORDS.—Notwithstanding clause (i), and unless otherwise required by applicable Federal law or court order, the Corporation may, at any time, destroy any records of a covered financial company for which the Corporation is appointed receiver, provided that 10 years have elapsed since the records were created or acquired by the covered financial company.

(iii) RECORDS DEFINED.—As used in this subparagraph, the terms ''records'' and ''records of a covered financial company'' mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (D) or (E)).

(D) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (E)).

(E) Any obligation to shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation as receiver for a covered financial company is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation

as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation as receiver may take any action (including making payments) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company;

(iii) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; or

(iv) to contain or address serious adverse effects on financial stability or the United States economy; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(5) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

(6) DEFINITIONS.—As used in this subsection, the term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver in preserving the assets of a covered financial company or liquidating or otherwise resolving the affairs of a covered financial company; and

(B) any obligations that the Corporation as receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered financial company.

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights

of repudiation under this subsection within a reasonable period of time following the date of such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and subparagraph (C) of this paragraph, the liability of the Corporation, as receiver for a covered financial company, for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver ; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the

term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (d), except as otherwise specifically provided in this subsection.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company was the

lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) applies shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of

the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(7)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation,

other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(7) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which

arises upon the date of appointment of the Corporation as receiver for such covered financial company at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); and

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(9) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term ''qualified financial contract'' means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term ''securities contract''—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security,

certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of

deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement

that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term ''commodity contract'' means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or trans-

action referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term ''forward contract'' means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ''repurchase agreement'', as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement

or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term ''repurchase agreement''(which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors of the Federal Reserve System)

or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agree-

ment or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term ''swap agreement'' means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit

swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occur-

rence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to

in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraph (10)—

(I) the term ''default'' means, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver ; and

(II) the term ''in danger of default'' means a covered financial company with respect to which the Cor-

1 poration or appropriate State author-
2 ity has determined that—
3 (aa) in the opinion of the
4 Corporation or such authority—
5 (AA) the covered finan-
6 cial company is not likely to
7 be able to pay its obligations
8 in the normal course of busi-
9 ness; and
10 (BB) there is no rea-
11 sonable prospect that the
12 covered financial company
13 will be able to pay such obli-
14 gations without Federal as-
15 sistance; or
16 (bb) in the opinion of the
17 Corporation or such authority—
18 (AA) the covered finan-
19 cial company has incurred or
20 is likely to incur losses that
21 will deplete all or substan-
22 tially all of its capital; and
23 (BB) there is no rea-
24 sonable prospect that the

capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term ''transfer'' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest

and foreclosure of the equity of redemption of the covered financial company.

(x) PERSON.—The term ''person'' includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1).

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified fi-

nancial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the third business day following the date of the appointment of the Corporation as receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ''walkaway clause'' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or

in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) RECORDKEEPING.—The Corporation, in consultation with the Agency, may prescribe regulations requiring that the covered financial company maintain such records with respect to qualified financial contracts (including market valuations) as the Corporation determines to be necessary or appropriate in order to assist the Corporation as receiver for the covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the

claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a

foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a covered financial company transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''financial institution'' means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

(ii) the term ''clearing organization'' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) TIMING.—The Corporation as receiver for a covered financial company

shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the third business day following the date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the third business day following the date of the appointment; or

(II) after the person has received notice that the contract has been

transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a covered financial company for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ''business day'' means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company except where such an interest is taken in contemplation of the insolvency of the covered financial company or with the in-

tent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company may enforce any contract, other than a liability insurance contract of a director or officer or a financial institution bond, entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a receiver .

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party, or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company, during the 90-day period beginning on the date of the appointment of the Corporation as receiver.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permit-

ting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) a determination had not been made under section 202 with respect to the covered financial company; and

(B) the covered financial company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including a case initiated by the Securities Investor Protection Corporation with respect to a financial company that is subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company and with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate—

(i) to minimize losses to the Corporation as receiver from the resolution of the covered financial company under this section; or

(ii) to prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to in-

duce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the receiver appointed for a covered financial company under this section, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver ; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in con-

nection with assistance provided under section 203.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver for one or more covered financial compa-

nies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—The Corporation, as receiver for a covered financial company,

may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the

rights, powers, authorities and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by operation of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures as are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY APPROPRIATE FEDERAL REGULATORY AGENCY REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the financial may, in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed as receiver may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A

bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph,

the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Corporation determines that such actions are necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company;

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; or

(IV) to contain or address serious adverse effects to financial stability or the United States economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from

a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement is in writing and executed by an authorized officer or representative of the covered financial company, and has been, since the time of its execution on official record of the company.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwith-

standing any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge financial company, as provided in paragraph (14).

(13) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a

corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (12)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as

the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (12)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (12)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (11) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (12), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the oc-

currence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (11).

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exer-

cise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(D) BURDEN OF PROOF.—In any hearing under this subsection, the Corporation has the burden of proof on the issue of adequate protection.

(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization

under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, FIRA shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a covered financial company's director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered financial company shall be filed not later than 30 days after the date

of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with

the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial company or bridge financial company that is or has a subsidiary that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11, United States Code, in respect of the distribution to any customer of all customer name securities and customer property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 of title 11, United States Code, in respect of the distribution to any customer of all customer property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the terms ''customer'', ''customer name securities'' and ''customer property'' have the same meanings as in section 741 of title II, United States Code; and

(B) the terms ''commodity broker'' and ''stockbroker'' have the same meanings as in section 101 of title 11, United States Code.

(n) SYSTEMIC RESOLUTION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the ''Systemic Resolution Fund'', which shall be available without further appropriation for the cost of actions authorized by this title, upon a determination made under section 202 to the Corporation to carry out the authorities contained in this title, including the payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (3), and the exercise of authorities under section 203.

(2) PROCEEDS.—Amounts received by the Corporation (including amounts borrowed under paragraph (3) and assessments received under subsection

(o), but excluding amounts received by any covered financial company when the Corporation is acting in its capacity as receiver for such company, and excluding amounts credited to the appropriate financing account as a means of financing credit activity, as applicable) shall be deposited into the Fund.

(3) CAPITALIZATION OF FUND.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to capitalize the Fund, upon the Secretary making the determination provided for in section 202, the Corporation is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, in the discretion of the Secretary, and under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(o) RECOVERY OF EXPENDED FUNDS FROM FINANCIAL COMPANIES.—

(1) RISK-BASED ASSESSMENTS.—

(A) IN GENERAL.—The Corporation shall recover the amount of funds expended out of the Fund under subsection (n) and which have not otherwise been recouped.

(B) AUTHORIZED ACTION.—Steps to recover such amounts shall include one or more risk-based assessments on financial companies, in such amount and manner, and subject to such terms and conditions as the Corporation determines, with the concurrence of the Secretary, and the Agency, are necessary to pay in full the obligations issued by Corporation to the Secretary, within 60 months from the date of the determination of the Secretary under section 202.

(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary and the Agency for Financial Stability, extend the time period under paragraph (2), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system or economic conditions in the United States.

(2) ASSESSMENT THRESHOLD AND GRADUATED ASSESSMENT RATE.—

(A) IN GENERAL.—The Corporation shall not impose assessments under this subsection any financial company whose total assets are less than $10,000,000,000.

(B) GRADUATED ASSESSMENTS.—The Corporation shall assess any financial company with $10,000,000,000 or more in total assets on a graduated basis that assesses financial companies with greater assets at a higher rate.

(C) CONSIDERATION OF OTHER ASSISTANCE.—The Corporation shall impose assessments under this subsection at a higher rate on any financial company that received payments or credit pursuant to section 208(d)(3).

(3) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraphs (1) and (2), the Corporation shall—

(A) take into account economic conditions generally affecting financial companies, so as to allow assessments to be lower during less favorable economic conditions;

(B) take into account any assessments imposed on a subsidiary of a financial company that is—

(i) an insured depository institution pursuant to section 7 or section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1823(c)(4)(G));

(ii) a member of the Securities Investor Protection Corporation pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd); or

(iii) an insurance company pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of rehabilitation, liquidation, or other State insolvency proceeding with respect to one or more insurance companies;

(C) take into account the risks presented by the financial company to financial stability or the United States economy and the extent to which the financial company has benefitted, or likely would benefit, from the resolution of a financial company under this title;

(D) take into account such other factors as the Corporation deems appropriate;

(E) distinguish among different classes of assets or different types of financial companies (including distinguishing among different types

of financial companies, based on their levels of capital and leverage) in order to establish comparable assessment bases among financial companies subject to this subsection;

(F) establish the parameters for the graduated assessment requirement in paragraph (2); and

(G) take into account the extent and type of off-balance-sheet exposures of financial companies.

(4) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies described in paragraph (2) such collection of information requirements that the Corporation deems necessary to carry out this subsection, after a determination under section 202.

(5) RULEMAKING.—The Corporation shall, in consultation with the Secretary and the Agency, prescribe regulations to carry out this subsection.

SEC. 209. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF ASSETS FROM RECEIVER OR LIQUIDATING AGENT.

(a) IN GENERAL.—Section 1032(1) of title 18, United States Code, is amended by inserting "the Federal Deposit Insurance Corporation acting as receiver for a

1 covered financial company, in accordance with title II of
2 the Restoring American Financial Stability Act of 2009,''
3 before ''or the National Credit''.

4 (b) CONFORMING AMENDMENT.—Section 1032 of
5 title 18, United States Code, is amended in the section
6 heading, by striking ''**of financial institution**''.

7 **SEC. 210. MISCELLANEOUS PROVISIONS.**

8 (a) BANKRUPTCY CODE AMENDMENT.—Section
9 109(b)(2) of title 11, United States Code, is amended by
10 inserting ''covered financial company (as that term is de-
11 fined in section 201 of the Restoring American Financial
12 Stability Act of 2009),'' after ''domestic insurance com-
13 pany,''.

14 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
15 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (12
16 U.S.C. 1823(c)(4)(G)(i)) is amended by inserting before
17 the period at the end the following: '', except that the de-
18 termination with regard to the exercise of authority by the
19 Corporation under this subparagraph shall apply only to
20 an insured depository institution, except where severe fi-
21 nancial conditions exist which threaten the stability of a
22 significant number of insured depository institutions''.

23 (c) FEDERAL DEPOSIT INSURANCE CORPORATION
24 IMPROVEMENT ACT OF 1991.—Section 403(a) of the Fed-
25 eral Deposit Insurance Corporation Improvement Act of

1991 (12 U.S.C. 4403(a)) is amended by inserting ''section 208(c) of the Restoring American Financial Stability Act of 2009, section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(d)),'' after ''section 11(e) of the Federal Deposit Insurance Act,''.

TITLE III—FINANCIAL INSTITUTIONS REGULATORY ADMINISTRATION

SEC. 301. PURPOSES.

The purposes of this title are—

(1) to provide for the safe and sound operation of the banking system of the United States;

(2) to preserve and protect the dual system of Federal and State-chartered depository institutions;

(3) to ensure the fair and appropriate supervision of each depository institution, regardless of the size or type of charter of the depository institution;

(4) to streamline and rationalize the supervision of depository institutions and the holding companies of depository institutions; and

(5) to improve the supervision of systemically significant financial institutions.

SEC. 302. DEFINITIONS.

In this title—

(1) the term ''Chairperson'' means the Chairperson of FIRA;

(2) the term ''community bank'' means a small national bank, a small State bank, a small Federal savings association, and a small State savings association, as determined by FIRA;

(3) the term ''covered institution'' means an institution described in paragraphs (1) through (9) of section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended by this Act;

(4) the term ''FIRA Board'' means the Board of Directors of the Financial Institutions Regulatory Administration established under section 312;

(5) the term ''specified financial institution'' has the same meaning as in section 101;

(6) the term ''transfer date'' means the date established under section 321;

(7) the term ''transferred employee'' means an employee transferred to FIRA under section 352; and

(8) the term ''Vice Chairperson'' means the Vice Chairperson of FIRA.

Subtitle A—Financial Institutions Regulatory Administration Established

SEC. 311. ESTABLISHMENT OF ADMINISTRATION.

(a) ESTABLISHMENT.—There is established the Financial Institutions Regulatory Administration, which shall be an independent establishment, as defined in section 104 of title 5, United States Code.

(b) INDEPENDENCE OF FIRA, AGENCY AND CFPA.—

(1) FEDERAL INFORMATION POLICY.—Section 3502(5) of title 44, United States Code, is amended by inserting ''the Financial Institutions Regulatory Administration, Agency for Financial Stability, Consumer Financial Protection Agency,'' after ''the Securities and Exchange Commission,''.

(2) INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES.—Section 111 of Public Law 93–495 (12 U.S.C. 250) is amended by striking ''Comptroller of the Currency, the Director of the Office of Thrift Supervision'' and inserting ''Financial Institutions Regulatory Administration, Agency for Financial Stability, Consumer Financial Protection Agency''.

SEC. 312. BOARD OF DIRECTORS OF THE ADMINISTRATION.

(a) FIRA BOARD ESTABLISHED.—The management of FIRA shall be vested in a Board of Directors.

(b) MEMBERS.—The members of the FIRA Board shall be—

(1) the Chairperson of the Corporation;

(2) the Chairman of the Board of Governors; and

(3) 3 individuals appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(c) POLITICAL AFFILIATION.—Not more than 3 of the members of the FIRA Board may be members of the same political party.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—

(1) CHAIRPERSON.—One of the appointed members of the FIRA Board shall be designated by the President, by and with the advice and consent of the Senate, to serve as Chairperson of the FIRA Board for a term of 5 years.

(2) VICE CHAIRPERSON.—One of the appointed members of the FIRA Board shall be—

(A) appointed from among individuals having experience in the supervision of State banks; and

(B) designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the FIRA Board.

(3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson, or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(e) TERMS.—

(1) TERM OF APPOINTED MEMBERS.—Each member of the FIRA Board appointed under subsection (b)(3) shall be appointed for a term of 6 years.

(2) INTERIM APPOINTMENTS.—An individual appointed to fill a vacancy occurring before the expiration of the term of a member shall be appointed only for the remainder of the term of the member.

(3) CONTINUATION OF SERVICE.—The Chairperson, Vice Chairperson, and each appointed member of the FIRA Board may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(f) VACANCY.—

(1) IN GENERAL.—Any vacancy on the FIRA Board shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Chairperson of the Corporation or the office of Chairman of the Board of Governors, and pending the appointment of a successor, or during the absence or disability of the Chairperson of the Corporation or the Chairman of the Board of Governors, the acting Chairperson of the Corporation or the acting Chairman of the Board of Governors, as the case may be, shall be a member of the FIRA Board in the place of the Chairperson of the Corporation or the Chairman of the Board of Governors.

(g) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—

(A) IN GENERAL.—No member of the FIRA Board may hold any office, position, or employment in any covered institution during—

(i) the period of service of such member on the FIRA Board; and

(ii) the 2-year period beginning on the date on which such member ceases to serve on the FIRA Board.

(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM.—The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the FIRA Board after serving the full term for which such member was appointed.

(2) RESTRICTION DURING SERVICE.—No member of the FIRA Board may—

(A) be an officer, director, or employee of any covered institution, Federal reserve bank, or Federal home loan bank; or

(B) hold stock in any covered institution.

(3) CERTIFICATION.—Upon taking office, each member of the FIRA Board shall—

(A) certify under oath that the member has complied with this subsection; and

(B) file the certification under subparagraph (A) with the secretary of the FIRA Board.

(h) COMPENSATION.—

(1) COMPENSATION OF CHAIRPERSON.—The Chairperson shall receive compensation at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(2) OTHER BOARD MEMBERS.—The 3 appointed members of the FIRA Board shall each be compensated at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(3) CONFORMING AMENDMENTS.—Title 5, United States Code, is amended—

(A) in section 5313, by adding at the end the following:

''Chairperson of the Financial Institutions Regulatory Administration.

''Director of the Consumer Financial Protection Agency.

''Chairperson of the board of directors of the Agency for Financial Stability.''; and

(B) in section 5314, by adding at the end the following:

''Board members of the Financial Institutions Regulatory Administration (3).

''Board members of the Consumer Financial Protection Agency (3).

''Board member of the Agency for Financial Stability (1).''.

SEC. 313. STATE BANK ADVISORY BOARD.

(a) ADVISORY BOARD ESTABLISHED.—There is established within FIRA a State Bank Advisory Board, which shall—

(1) make recommendations to the FIRA Board concerning—

(A) rules, guidelines, and orders of FIRA;

(B) the streamlining of the regulation and supervision of State-chartered community banks that are well managed and well capitalized (as those terms are defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o)), including the extent to which the States, in lieu of FIRA, are able to carry out additional supervision of small State-chartered community banks, in a manner that is consistent with the safe and sound operation of such small State-chartered community banks; and

(C) any proposed supervisory, examination, or enforcement policies of FIRA that may affect the financial performance, condition, efficiency, or competitiveness of State banks; and

(2) inform the FIRA Board about developments and issues relating to State banks and the supervision of State banks.

(b) MEMBERS.—

(1) NUMBER OF MEMBERS; TERM.—The Advisory Board shall have 5 members, who shall serve for terms of 2 years.

(2) APPOINTMENT.—The members of the Advisory Board shall be appointed by the FIRA Board, in consultation with the Conference of State Banking Supervisors, from among the State bank commissioners, in rotation.

(c) PERSONNEL, ADMINISTRATIVE SERVICES, AND PROPERTY.—FIRA shall provide to the Advisory Board such personnel, administrative services, and property as FIRA, in consultation with the Advisory Board, determines are necessary to carry out this section.

(d) FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Board.

SEC. 314. DIVISION OF COMMUNITY BANK SUPERVISION.

(a) DIVISION ESTABLISHED.—There is established within FIRA, the Division of Community Bank Supervision.

(b) PURPOSES.—The Division of Community Bank Supervision shall—

(1) make recommendations to the FIRA Board for standards appropriate to the supervision of community banks;

(2) examine and supervise community banks; and

(3) promote a healthy community bank sector.

(c) DIRECTOR.—The head of the Division of Community Bank Supervision shall be the Director of Community Bank Supervision, who shall—

(1) be appointed by the Chairperson; and

(2) report directly to the Chairperson.

(d) STAFF.—FIRA shall—

(1) employ such staff as are necessary to carry out this section; and

(2) ensure that employees of the Division of Community Bank Supervision have experience or training in community bank supervision.

(e) PROHIBITION.—No member of the FIRA Board or other employee of FIRA may promote the conversion of a State bank to a national bank, subject to rules issued by the FIRA Board, in consultation with the Advisory Board.

Subtitle B—Transfer of Powers and Duties to FIRA

SEC. 321. TRANSFER DATE.

(a) TRANSFER DATE.—Except as provided in subsection (b), the term ''transfer date'' means the date that is 1 year after the date of enactment of this Act.

(b) EXTENSION PERMITTED.—

(1) NOTICE REQUIRED.—The Secretary, in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors, and the Corporation, may designate a transfer date that is not later than 18 months after the date of enactment of this Act, if the Secretary transmits to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 1 year after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(2) PUBLICATION OF NOTICE.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish in the Federal Register notice of any date designated under paragraph (1).

SEC. 322. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Except as provided in title X, all functions of the Office of the Comptroller of the Currency and of the Comptroller of the Currency are transferred to FIRA.

(c) OFFICE OF THRIFT SUPERVISION.—Except as provided in title X, all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision are transferred to FIRA.

(d) CERTAIN FUNCTIONS OF THE CORPORATION.—

(1) IN GENERAL.—All functions of the Corporation relating to the supervision or regulation of State nonmember banks and foreign banks having an in-

sured branch are transferred to FIRA, including all functions of the Corporation under—

(A) sections 7(a), 20, 21, 22, 27, 30(c), 32, 33, 34, 35, 36, 37, and 39, subsections (b) through (n), (r), (s), (u), and (v) of section 8, subsections (b)(2)(A), (c), (d), and (e) of section 10, and subsections (c) (other than paragraph (1)), (d), (g), (i), (j), (l), (o), and (p) of section 18 of the Federal Deposit Insurance Act;

(B) the Depository Institution Management Interlocks Act;

(C) the Federal Financial Institutions Examination Council Act of 1978;

(D) the Right to Financial Privacy Act of 1978;

(E) the Bank Service Corporation Act;

(F) the Expedited Funds Availability Act;

(G) the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(H) the Federal Deposit Insurance Corporation Improvement Act of 1991; and

(I) the Depository Institutions Disaster Relief Act of 1992.

(2) FUNCTIONS NOT TRANSFERRED.—Notwithstanding paragraph (1), no functions of the Corporation relating to deposit insurance or resolution are transferred to FIRA.

(3) CONFORMING AMENDMENTS.—Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended by striking ''means—'' and all that follows through the end of the subsection and inserting the following: ''means FIRA, in the case of—

''(1) any national banking association

''(2) any branch or agency of a foreign bank;

''(3) any State insured bank;

''(4) any foreign bank that operates a branch in the United States;

''(5) any agency or commercial lending company, other than a Federal agency;

''(6) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966;

''(7) any bank holding company and any subsidiary of a bank holding company; and

"(8) any savings association or any savings and loan holding company.".

(e) CERTAIN FUNCTIONS OF THE BOARD OF GOVERNORS.—

(1) IN GENERAL.—All functions of the Board of Governors (and any Federal Reserve bank) relating to the supervision of member banks, branches or agencies of foreign banks with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978, foreign banks that do not operate an insured branch, agencies or commercial lending companies (other than a Federal agency), supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.), bank holding companies, and the subsidiaries of bank holding companies are transferred to FIRA, including the functions of the Board of Governors under—

(A) sections 6 (other than the 1st and 2d paragraphs), 9, 19(h), 23, 23A, 23B, 24(a),

24A, 25, 25A, and 29, and subsections (g) and (h) of section 22, of the Federal Reserve Act;

(B) the Bank Holding Company Act of 1956;

(C) the Bank Holding Company Act Amendments of 1970;

(D) the International Banking Act of 1978;

(E) sections 20, 31, and 32 of the Banking Act of 1933;

(F) the Federal Deposit Insurance Act;

(G) the Bank Protection Act of 1968;

(H) the Depository Institution Management Interlocks Act;

(I) the Bank Service Corporation Act;

(J) the Federal Financial Institutions Examination Council Act of 1978;

(K) the Right to Financial Privacy Act of 1978;

(L) the International Lending Supervision Act of 1983;

(M) the Expedited Funds Availability Act;

(N) the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(O) the Federal Deposit Insurance Corporation Improvement Act of 1991; and

(P) the Depository Institutions Disaster Relief Act of 1992.

(2) FUNCTIONS NOT TRANSFERRED.—Notwithstanding paragraph (1), no functions of the Board of Governors under this Act or the Federal Reserve Act (12 U.S.C. 221 et seq.) relating to monetary policy, open market operations, payment, settlement, or clearing activities, financial market utilities, or advances or extensions of credit under the Federal Reserve Act are transferred to FIRA.

SEC. 323. ABOLISHMENT.

(a) OFFICE OF COMPTROLLER OF THE CURRENCY ABOLISHED.—Effective 90 days after the transfer date, the Office of the Comptroller of the Currency and the position of Comptroller of the Currency are abolished.

(b) OFFICE OF THRIFT SUPERVISION ABOLISHED.—Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 324. SAVINGS PROVISIONS.

(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 322(b) and 323 shall not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Comptroller of the Currency or the Office of the Comptroller of the Currency before the transfer date, except that, for any action or proceeding arising out of a function of the Comptroller of the Currency transferred to the Chairperson by this title, the Chairperson or FIRA shall be substituted for the Comptroller of the Currency or the Office of the Comptroller of the Currency, as the case may be, as a party to any such action or proceeding as of the transfer date.

(b) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 322(c) and 323 shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Su-

pervision, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that, for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision transferred to the Chairperson by this title, the Chairperson or FIRA shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as the case may be, as a party to the action or proceeding as of the transfer date.

(c) CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 322(d) shall not affect the validity of any right, duty, or obligation of the United States, the Corporation, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Corporation before the transfer date, except that, for any action or proceeding arising out

of a function of the Corporation transferred to the Chairperson or FIRA by this title, the Chairperson or FIRA shall be substituted for the Corporation, as the case may be, as a party to the action or proceeding as of the transfer date.

(d) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 322(e) shall not affect the validity of any right, duty, or obligation of the United States, the Board of Governors, any Federal Reserve bank, or any other person, that existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This Act shall not abate any action or proceeding commenced by or against the Board of Governors or a Federal Reserve bank before the transfer date, except that, for any action or proceeding arising out of a function of the Board of Governors or a Federal Reserve bank transferred to the Chairperson or FIRA by this title, the Chairperson or FIRA shall be substituted for the Board of Governors or the Federal Reserve bank, as the case may be, as a party to the action or proceeding as of the transfer date.

(e) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, ETC.—

(1) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Office of the Comptroller of the Currency, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against FIRA until modified, terminated, set aside, or superseded in accordance with applicable law by FIRA, by any court of competent jurisdiction, or by operation of law.

(2) OFFICE OF THRIFT SUPERVISION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpreta-

tions, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against FIRA until modified, terminated, set aside, or superseded in accordance with applicable law by FIRA, by any court of competent jurisdiction, or by operation of law.

(3) CORPORATION.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Corporation, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions,

determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against FIRA until modified, terminated, set aside, or superseded in accordance with applicable law by FIRA, by any court of competent jurisdiction, or by operation of law.

(4) BOARD OF GOVERNORS.—All orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, that have been issued, made, prescribed, or allowed to become effective by the Board of Governors, or by a court of competent jurisdiction, in the performance of functions that are transferred by this title and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials, and shall be enforceable by or against FIRA until modified, terminated, set aside, or superseded in accordance with applicable law by FIRA, by any court of competent jurisdiction, or by operation of law.

(f) IDENTIFICATION OF REGULATIONS CONTINUED.—Not later than the transfer date, the Chairperson shall—

(1) in consultation with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation, identify the regulations continued under subsection (c) that will be enforced by FIRA; and

(2) publish a list of such regulations in the Federal Register.

(g) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Corporation, or the Board of Governors which that agency, in performing functions transferred by this title, has proposed before the transfer date but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of FIRA.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of the Comptroller of the Currency, the Office of Thrift

Supervision, the Corporation, or the Board of Governors which that agency, in performing functions transferred by this title, has published before the transfer date but which has not become effective before that date, shall become effective as a regulation of FIRA according to the terms of the regulation.

SEC. 325. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY AND THE OFFICE OF THRIFT SUPERVISION.—

(1) COMPTROLLER OF THE CURRENCY AND DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—On and after the transfer date, any reference in any Federal law to the Comptroller of the Currency or the Director of the Office of Thrift Supervision shall be deemed to be a reference to the FIRA Board.

(2) OFFICE OF THE COMPTROLLER OF THE CURRENCY AND THE OFFICE OF THRIFT SUPERVISION.—On and after the transfer date, any reference in any Federal law to the Office of the Comptroller of the Currency or the Office of Thrift Supervision shall be deemed to be a reference to FIRA.

(b) CORPORATION AND BOARD OF GOVERNORS.—

(1) CORPORATION.—On and after the transfer date, any reference in any Federal law to the Cor-

poration or the Board of Directors of such Corporation in connection with any function of the Corporation or Board of Directors under any provision of law referred to in section 322(d) shall be deemed to be a reference to FIRA.

(2) BOARD OF GOVERNORS.—On and after the transfer date, any reference in any Federal law to the Board of Governors or any Federal Reserve bank in connection with any function of the Board of Governors or any Federal Reserve bank under any provision of law referred to in section 322(e) shall be deemed to be a reference to FIRA.

Subtitle C—Operations of FIRA

SEC. 331 TRANSFERRED POWERS, AUTHORITIES, RIGHTS, AND DUTIES.

The FIRA Board shall have—

(1) all powers, authorities, rights, and duties that, as of the day before the transfer date, were vested in—

(A) the Office of the Comptroller of the Currency and the Comptroller of the Currency; and

(B) the Office of Thrift Supervision and the Director of the Office of Thrift Supervision;

(2) the powers, authorities, rights, and duties relating to the functions described in section 322(d) that were vested in the Corporation, as of the day before the transfer date; and

(3) the powers, authorities, rights, and duties relating to the functions described in section 322(e) that were vested in the Board of Governors, as of the day before the transfer date.

SEC. 332. REGULATIONS AND ORDERS.

FIRA may prescribe such regulations and guidelines, and issue such orders, as FIRA determines to be appropriate to carry out this title, and the powers, authorities, rights, and duties transferred to FIRA under this title.

SEC. 333. ADDITIONAL POWERS AND DUTIES OF THE CHAIRPERSON.

(a) BOARD MEMBERSHIP.—The Chairperson, in his or her capacity as the Chairperson of FIRA, shall serve as a member of—

(1) the Agency for Financial Stability, established under title I;

(2) the Consumer Financial Protection Agency, established under title X; and

(3) the Neighborhood Reinvestment Corporation, established under section 603 of the Housing

and Community Development Amendments of 1978 (42 U.S.C. 8102).

(b) LITIGATION.—The Chairperson may act in the name of the Chairperson and through the attorneys of the Chairperson—

(1) to enforce any provision of this title, or any other provision of law over which the Chairperson has jurisdiction; and

(2) in any action, suit, or proceeding, to which the Chairperson is a party.

SEC. 334. ADDITIONAL POWERS OF THE BOARD OF GOVERNORS AND THE FEDERAL DEPOSIT INSURANCE CORPORATION.

(a) DEFINITION.—For purposes of this section, the term ''covered institution'' means an institution regulated by FIRA under this title.

(b) ADDITIONAL POWERS OF THE BOARD OF GOVERNORS.—

(1) IN GENERAL.—Subject to the limitations described in paragraphs (2) and (3), the Board of Governors may, if it determines that such action is necessary to carry out the responsibilities of the Board of Governors (including the Federal reserve banks) relating to monetary policy, open market operations, payment, settlement, or clearing activities,

1 financial market utilities, or advances or extensions
2 of credit under the Federal Reserve Act (12 U.S.C.
3 221 et seq.) under this Act and otherwise applicable
4 Federal law—
5 (A) request any information from a cov-
6 ered institution;
7 (B) request any information from FIRA,
8 including examination reports; and
9 (C) request that employees of the Board of
10 Governors (including employees of Federal re-
11 serve banks) participate with FIRA in any ex-
12 amination by FIRA of a covered institution.
13 (2) USE OF OTHER SOURCES OF INFORMA-
14 TION.—To the fullest extent possible, the Board of
15 Governors shall use, in lieu of a request for informa-
16 tion from a covered institution—
17 (A) reports that a covered institution or
18 any subsidiary of a covered institution has been
19 required to provide to another Federal or State
20 regulatory agency;
21 (B) information that is available from
22 FIRA or a State regulatory agency;
23 (C) information that is otherwise required
24 to be reported publicly; and

(D) externally audited financial statements of the covered institution or subsidiary of the covered institution.

(3) COMPLIANCE BY FIRA WITH REQUESTS BY BOARD OF GOVERNORS.—

(A) PROVISION OF INFORMATION.—

(i) IN GENERAL.—FIRA shall provide any information requested by the Board of Governors under paragraph (1)(B).

(ii) INFORMATION FROM COVERED INSTITUTIONS.—Upon a request by the Board of Governors to FIRA for information relating to a covered institution, FIRA shall promptly provide such information.

(B) COORDINATION WITH FIRA ON EXAMINATIONS.—Upon a request by the Board of Governors under paragraph (1)(C), FIRA shall coordinate with the Board of Governors to enable employees of the Board of Governors (including employees of a Federal reserve bank) to participate in an examination of a covered institution.

(c) ADDITIONAL POWERS OF THE CORPORATION.—

(1) IN GENERAL.—Subject to the limitations described in paragraphs (2) and (3), the Chair-

person of the Corporation may, if the Chairperson of the Corporation determines that such action is necessary to carry out the responsibilities of the Corporation relating to deposit insurance or resolution under this Act and otherwise applicable Federal law—

(A) request any information from a covered institution;

(B) request any information from FIRA, including examination reports; and

(C) request that staff of the Corporation participate with FIRA in any examination by FIRA of a covered institution.

(2) USE OF OTHER SOURCES OF INFORMATION.—To the fullest extent possible, the Corporation shall use, in lieu of a request for information from a covered institution—

(A) reports that a covered institution or any subsidiary of a covered institution has been required to provide to another Federal or State regulatory agency;

(B) information that is available from FIRA or a State regulatory agency;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of the covered institution or subsidiary of the covered institution.

(3) COMPLIANCE BY FIRA WITH REQUESTS BY CORPORATION.—

(A) PROVISION OF INFORMATION.—

(i) IN GENERAL.—FIRA shall provide any information requested by the Chairperson of the Corporation under paragraph (1)(B).

(ii) INFORMATION FROM COVERED INSTITUTIONS.—Upon a request by the Corporation to FIRA for information relating to a covered institution, FIRA shall promptly provide such information.

(B) COORDINATION WITH FIRA ON EXAMINATIONS.—Upon a request by the Chairperson of the Corporation under paragraph (1)(C), FIRA shall coordinate with the Corporation to enable staff of the Corporation to participate in an examination of a covered institution.

(4) ADDITIONAL SPECIAL EXAMINATION POWERS.—Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended—

(A) by striking paragraph (5);

(B) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(C) by adding at the end the following:

"(7) PARTICIPATION IN FIRA EXAMINATIONS.—

"(A) AUTHORITY TO PARTICIPATE IN FIRA EXAMINATIONS.—The Chairperson may direct an examiner appointed under paragraph (1) to participate in an examination by FIRA of an institution regulated by FIRA under title III of the Restoring American Financial Stability Act of 2009.

"(B) COORDINATION.—The Chairperson shall coordinate with FIRA to enable the staff of the Corporation to participate in the examination of an institution described in subparagraph (A).".

(5) TECHNICAL AND CONFORMING AMENDMENTS.—Section 10(b) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) is amended—

(A) in paragraph (2)—

(i) by striking subparagraph (A); and

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(B) in paragraph (4)(A), in the matter preceding clause (i), by striking ''paragraph (2) or (3)'' and inserting ''paragraph (2), (3), and (7)''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) BOARD OF GOVERNORS.—Section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)) is amended by adding at the end the following:

''(3) To exercise the additional powers of the Board under section 334(b) of the Restoring American Financial Stability Act of 2009.''.

(2) CORPORATION.—Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following:

''(12) INFORMATION RELATING TO INSTITUTIONS REGULATED BY FIRA.—For the purposes of appropriately insuring deposits and understanding and monitoring risks to the Deposit Insurance Fund, the Corporation may exercise the additional powers of the Corporation under section 334(c) of the Restoring American Financial Stability Act of 2009.''.

SEC. 335. FUNDING.

(a) DEFINITION.—In this section, the term ''FIRA Fund'' means the Financial Institutions Regulatory Administration Fund established under subsection (c).

(b) AUTHORITY TO COLLECT ASSESSMENTS, FEES, AND OTHER CHARGES, AND TO RECEIVE TRANSFERRED FUNDS.—

(1) IN GENERAL.—Effective on the transfer date, except as provided in paragraph (2), the Chairperson may collect an assessment, fee, or other charge from any covered institution (including any affiliate of a covered institution) supervised or regulated by FIRA, as the Chairperson determines is necessary or appropriate to carry out this title.

(2) AMOUNT OF ASSESSMENTS, FEES, AND OTHER CHARGES.—

(A) CONSIDERATIONS.—In establishing the amount of an assessment, fee, or charge collected from a covered institution under this subsection, the Chairperson may take into account the total assets of the covered institution (including any affiliate of the covered institution), the financial and managerial condition of the covered institution, and the examination rating of a covered institution that is supervised or regulated by FIRA.

(B) AMOUNT OF FEES ESTABLISHED.—

(i) NATIONAL BANKS, FEDERAL SAVINGS ASSOCIATIONS, AND FEDERAL BRANCHES AND AGENCIES.—

(I) IN GENERAL.—For national banks, Federal savings associations, and Federal branches and agencies that are supervised or regulated by FIRA, the aggregate amount of assessments, fees, and charges that are collected by FIRA from all such national banks, savings associations, and Federal branches and agencies shall be not less than the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to such national banks, Federal savings associations, and Federal branches and agencies.

(II) LIMITATION.—The aggregate amount collected by FIRA under this clause from all national banks, Federal savings associations, Federal branches and agencies that have less than $10,000,000,000 in total assets

may not exceed 20 percent of the aggregate amount collected by FIRA from all national banks, Federal savings associations, and Federal branches and agencies under this clause.

(ii) SMALLER STATE BANKS, STATE SAVINGS ASSOCIATIONS, AND STATE-LICENSED BRANCHES AND AGENCIES.—FIRA may not collect an assessment, fee, or charge under this subsection from a State bank, State savings association, or State-licensed branch or agency that—

(I) is supervised or regulated by FIRA; and

(II) has total assets of less than $10,000,000,000.

(iii) LARGER STATE BANKS.—For State banks, State savings associations, and State-licensed branches and agencies that are supervised or regulated by FIRA and that have total assets of $10,000,000,000 or more, the aggregate amount of assessments, fees, and charges collected by FIRA from all such State

banks, State savings associations, and State-licensed branches and agencies shall be an amount equal to 50 percent of the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to such State banks, State savings associations, and State-licensed branches and agencies.

(iv) SMALLER BANK HOLDING COMPANIES AND SAVINGS AND LOAN HOLDING COMPANIES.—FIRA may not collect an assessment, fee, or charge under this subsection from a bank holding company or a savings and loan holding company that is supervised or regulated by FIRA and that has total assets of less than $10,000,000,000.

(v) LARGER BANK HOLDING COMPANIES AND SAVINGS AND LOAN HOLDING COMPANIES.—

(I) IN GENERAL.—For bank holding companies and savings and loan holding companies that are supervised or regulated by FIRA and that have total assets of

$10,000,000,000 or more, the aggregate amount of all assessments, fees, and charges collected by FIRA for all such bank holding companies and savings and loan holding companies shall be not less than the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to such bank holding companies and savings and loan holding companies.

(II) ESTIMATION OF EXPENSES.—For purposes of this clause, the estimated expenses of FIRA for carrying out the duties of FIRA with respect to bank holding companies and savings and loan holding companies described in subclause (I) shall not include any estimated expenses of FIRA for carrying out the duties of FIRA with respect to national banks, Federal savings associations, State banks, and State savings associations.

(vi) OTHER INSTITUTIONS UNDER THE SUPERVISION OR REGULATION OF FIRA.—For any other covered institutions

that are supervised or regulated by FIRA, the aggregate amount collected by FIRA shall be not less than the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to such covered institutions.

(C) TRANSFER OF FUNDS.—

(i) BY BOARD OF GOVERNORS.—

(I) FOR DUTIES RELATING TO SMALLER STATE BANKS AND STATE SAVINGS ASSOCIATIONS.—The Board of Governors shall transfer to FIRA an amount equal to 20 percent of the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to State banks and State savings associations having total assets of less than $10,000,000,000.

(II) FOR DUTIES RELATING TO SMALLER STATE-LICENSED BRANCHES AND AGENCIES.—The Board of Governors shall transfer to FIRA an amount equal to the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to State-

licensed branches and agencies having total assets of less than $10,000,000,000.

(III) FOR DUTIES RELATING TO LARGER STATE BANKS.—The Board of Governors shall transfer to FIRA an amount equal to 50 percent of the estimated total expenses of FIRA for carrying out all duties of FIRA with respect to State banks, State savings associations, and State-licensed branches and agencies having total assets of $10,000,000,000 or more.

(IV) FOR DUTIES RELATING TO SMALLER BANK HOLDING COMPANIES AND SAVINGS AND LOAN HOLDING COMPANIES.—

(aa) IN GENERAL.—The Board of Governors shall transfer to FIRA an amount equal to the total estimated expenses of FIRA for carrying out all duties of FIRA with respect to bank holding companies and savings and loan holding companies having

total assets of less than $10,000,000,000.

(bb) ESTIMATION OF EXPENSES.—For purposes of this subclause, the estimated expenses of FIRA for carrying out all duties of FIRA with respect to bank holding companies and savings and loan holding companies described in item (aa) shall not include any estimated expenses incurred by FIRA for carrying out all duties of FIRA with respect to national banks, Federal savings associations, State banks, and State savings associations.

(ii) BY CORPORATION.—The Corporation shall transfer to FIRA an amount equal to 80 percent of the estimated total expenses incurred by FIRA for carrying out all duties of FIRA with respect to State banks and State savings associations having total assets of less than $10,000,000,000.

(c) FINANCIAL INSTITUTIONS REGULATORY ADMINISTRATION FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the ''Financial Institutions Regulatory Administration Fund'' (referred to in this subsection as the ''FIRA Fund'').

(2) FUND RECEIPTS.—All amounts transferred to FIRA under section 354, and all moneys received by FIRA from any other source, shall be deposited into the FIRA Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN FIRA FUND MAY BE INVESTED.—FIRA may request the Secretary to invest the portion of the FIRA Fund that is not, in the judgment of FIRA, required to meet the needs of the FIRA Fund.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the FIRA Fund, as determined by FIRA.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

SEC. 336. PERSONNEL.

(a) APPOINTMENT.—

(1) IN GENERAL.—The Chairperson may fix the number of, and appoint and direct, all employees of FIRA.

(2) AMENDMENT.—Section 5240 of the Revised Statutes of the United States (12 U.S.C. 481) is amended—

(A) in the first sentence of the first undesignated paragraph, by striking ''The Comptroller of the Currency, with the approval of the Secretary of the Treasury,'' and inserting ''The Chairperson of the Financial Institutions Regulatory Administration (referred to in this section as the 'Chairperson')'';

(B) in the second undesignated paragraph—

(i) in the fourth sentence, by striking ''with the approval of the Secretary of the Treasury''; and

(ii) by striking the ninth sentence;

(C) by striking ''Comptroller of the Currency'' each place that term appears and inserting ''Chairperson''; and

(D) by striking ''Comptroller'' each place that term appears and inserting ''Chairperson''.

(b) COMPENSATION.—

(1) IN GENERAL.—The Chairperson may fix the number of, and appoint and direct, an executive director and all other employees of FIRA. The employment of an executive director shall be subject to confirmation by the FIRA Board.

(2) COMPENSATION.—The Chairperson shall fix, adjust, and administer the pay for the executive director and all other employees of FIRA, without regard to chapter 51 or subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(3) ANNUAL REPORT TO CONGRESS.—The Chairperson shall submit to Congress an annual report on the structure of compensation and benefits of the employees of FIRA.

SEC. 337. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Chairperson may—

(1) enter into and perform contracts, execute instruments, and acquire, in any lawful manner, such goods and services, or personal or real property (or property interest) as the Chairperson deems necessary to carry out the duties and responsibilities of FIRA; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle D—Additional FIRA Authority

SEC. 341. EXAMINATIONS OF COMPANIES THAT DO NOT CONTROL BANKS.

(a) IN GENERAL.—FIRA may make examinations of each specified U.S. nonbank financial company and each subsidiary of such company, and any United States subsidiaries, branches, or agencies of a specified foreign nonbank financial company, to determine—

(1) the nature of the operations and financial condition of the company and such subsidiaries;

(2) the financial, operational, and other risks within the holding company that may pose a threat

to the safety and soundness of such holding company or to the stability of the United States financial system;

(3) the systems for monitoring and controlling such risks; and

(4) compliance with the prudential standards promulgated by the Agency or any provision of Federal law that FIRA has specific jurisdiction to enforce against such company or subsidiary of such company and those governing transactions and relationships between such company and any other specified financial company.

(b) USE OF EXAMINATION REPORTS.—FIRA shall, to the extent possible, for purposes of this section, use reports of examination of functionally regulated subsidiaries made by their primary financial regulatory agency.

(c) ENHANCED PUBLIC DISCLOSURES.—In order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities of a specified financial company, FIRA shall require such company to make such periodic public disclosures as the Agency may, by regulation, prescribe.

SEC. 342. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a specified U.S. nonbank financial company, a speci-

fied foreign nonbank financial company, and their subsidiaries shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company and its subsidiaries were insured depository institutions, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If FIRA determines that a condition, practice, or activity of a functionally regulated subsidiary of a financial company described in subsection (a) does not comply with the regulations or orders prescribed by the Agency under this Act, or otherwise poses a threat to the financial stability of the United States, FIRA may recommend in writing to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACKSTOP AUTHORITY.—If the primary financial regulatory agency does not initiate an action

or enforcement proceeding before the end of the 30-day period beginning on the date on which such agency receives a recommendation under paragraph (1), FIRA shall report to the Agency for Financial Stability the failure of the primary financial regulatory agency to initiate an action or enforcement proceeding.

SEC. 343. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a specified financial company shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a specified financial company shall not acquire direct or indirect ownership or control of any voting shares of any company engaged in nonbanking activities having total consolidated assets of $10,000,000,000 or more, without providing written notice to FIRA in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard

to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a specified financial company, as described in paragraph (1), including a financial company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—

(A) CRITERIA.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), FIRA shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the global or United States economy.

(B) WELL CAPITALIZED AND WELL MANAGED.—FIRA shall deny any proposed acquisition for which notice has been submitted pursu-

ant to paragraph (1) by a specified financial company, unless before and immediately after the proposed acquisition, the specified financial company is and will be well capitalized and well managed.

(5) APPLICATION OF BANK HOLDING COMPANY REQUIREMENTS.—Nothing in this section is intended to, nor shall it be deemed to, annul, alter, or otherwise modify any requirement to which a financial company is otherwise subject as a result of its status as a bank holding company or financial holding company, other than section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), which shall be inapplicable to an acquisition of voting shares of any company engaged in nonbanking activities by a specified financial company that is subject to the filing requirement in paragraph (1).

SEC. 344. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL HOLDING COMPANIES.

A specified financial company shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that FIRA shall not exercise the authority

provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a specified U.S. financial company as a management official of any other nonaffiliated specified U.S. financial company (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

Subtitle E—Transitional Provisions

SEC. 351. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY.

(a) INTERIM AUTHORITY OF CHAIRPERSON.—During the period beginning on the date on which the first Chairperson is appointed under section 312 and ending on the transfer date, the Chairperson shall—

(1) consult and cooperate with the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation to facilitate the orderly transfer of functions to FIRA;

(2) determine, from time to time—

(A) the amount of funds necessary to pay the expenses of FIRA (including expenses for personnel, property, and administrative services);

(B) which personnel are appropriate to facilitate the orderly transfer of functions under this title; and

(C) what property and administrative services are necessary to support FIRA; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) INTERIM RESPONSIBILITIES.—Before the transfer date, upon the request of the Chairperson, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors, and the Corporation shall each—

(1) pay to the Chairperson, from funds obtained by such agencies through assessments, fees, or other charges, 25 percent of the total amount that the Director determines to be necessary under subsection (a)(2)(A);

(2) detail to FIRA such personnel as the Chairperson determines to be appropriate under subsection (a)(2)(B); and

(3) make available to FIRA such property and provide to FIRA such administrative services as the Chairperson determines to be necessary under subsection (a)(2)(C).

(c) NOTICE REQUIRED.—The Chairperson shall give to the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Chairman of the Board of Governors, and the Chairperson of the Corporation reasonable notice of any request that the Chairperson intends to make under subsection (b).

SEC. 352. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) TRANSFER OF EMPLOYEES.—

(A) OFFICE OF THE COMPTROLLER OF THE CURRENCY AND OFFICE OF THRIFT SUPERVISION.—All employees of the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall be transferred to FIRA.

(B) CORPORATION.—

(i) DETERMINATION BY CHAIRPERSON.—The Chairperson, in consultation with the Corporation, shall determine the number and type of employees of the Corporation necessary to carry out the duties transferred to FIRA under section 322(e) in accordance with this title.

(ii) TRANSFER.—The Corporation shall transfer to FIRA the number and

type of employees the Chairperson determines are necessary under clause (i).

(C) BOARD OF GOVERNORS.—

(i) DETERMINATION BY CHAIRPERSON.—

(I) IN GENERAL.—The Chairperson, in consultation with the Board of Governors, shall determine the number and type of employees of the Board of Governors necessary to carry out the duties transferred to FIRA under section 322(d) in accordance with this title.

(II) FEDERAL RESERVE BANK EMPLOYEES.—For purposes of this clause, the term ''employee of the Board of Governors'' includes an employee of a Federal reserve bank who, on the day before the transfer date, performs functions on behalf of the Board of Governors.

(ii) TRANSFER.—The Board of Governors shall transfer to FIRA the number and type of employees the Chairperson determines are necessary under clause (i).

(D) TRANSFER OF EMPLOYEES PERFORMING CONSUMER FINANCIAL PROTECTION FUNCTIONS.—Nothing in this paragraph shall affect the transfer of employees performing or supporting consumer financial protection functions of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Corporation, or the Board of Governors to the Consumer Financial Protection Agency, as provided in title X of this Act.

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors, and the Corporation under Federal law that relates to the functions transferred under section 322, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Chairperson.

(B) DECLINING TRANSFERS ALLOWED.—The Chairperson may decline to accept a trans-

fer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this title shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS ACT.—If any provision of this title conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EMPLOYEES' STATUS AND ELIGIBILITY.—The transfer of functions and employees under this title, and the abolishment of the Office of the Comptroller of the Currency and the Office of Thrift Supervision under section 323, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee shall be placed in a position at FIRA with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at FIRA responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position in FIRA, if the examiner carries out examinations of the same type

of institutions as an employee of FIRA as the examiner carried out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the transfer date, an employee holding a permanent position on the day before the date on which the employee was transferred shall not be involuntarily separated or involuntarily reassigned outside the locality pay area (as defined by the Office of Personnel Management) of the employee.

(2) EXCEPTIONS.—The Chairperson may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this title, a transferred employee shall be paid

at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the 2-year period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Chairperson may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by FIRA.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Chairperson to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred em-

ployee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by FIRA.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairperson shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee

may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee transferred, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Chairperson shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairperson determines that FIRA will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee transferred, a transferred employee who is a member of the program may, before the decision of the Chairperson takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the transfer date, the Chairperson determines that FIRA will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of Chairperson takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of

1 title 5, Code of Federal Regulations (or any
2 successor thereto).
3 (D) CONTRIBUTION OF TRANSFERRED EM-
4 PLOYEE.—
5 (i) IN GENERAL.—Subject to clause
6 (ii), a transferred employee who is enrolled
7 in a plan under the Federal Employees
8 Health Benefits Program shall pay any
9 employee contribution required under the
10 plan.
11 (ii) COST DIFFERENTIAL.—The
12 Chairperson shall pay any difference in
13 cost between the employee contribution re-
14 quired under the plan provided to trans-
15 ferred employees by the agency from which
16 the employee transferred on the date of en-
17 actment of this Act and the plan provided
18 by the Chairperson under this section.
19 (iii) FUNDS TRANSFER.—The Chair-
20 person shall transfer to the Employees
21 Health Benefits Fund established under
22 section 8909 of title 5, United States
23 Code, an amount determined by the Direc-
24 tor of the Office of Personnel Manage-
25 ment, after consultation with the Chair-

person and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this Act on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Chairperson, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee

enrolled in a life insurance plan under this clause shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Chairperson shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Chairperson shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Chairperson and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, the Chairperson immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the transfer date, the Chairperson shall implement a uniform pay and classification system for all transferred employees.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Chairperson—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other transferred employee on the basis of prior employment by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Cor-

1 poration, the Board of Governors, or a Federal re-
2 serve bank; and
3 (2) may take such action as is appropriate in
4 an individual case to ensure that a transferred em-
5 ployee receives equitable treatment, with respect to
6 the status, tenure, pay, benefits (other than benefits
7 under programs administered by the Office of Per-
8 sonnel Management), and accrued leave or vacation
9 time for prior periods of service with any Federal
10 agency of the transferred employee.

11 **SEC. 353. PROPERTY TRANSFERRED.**

12 (a) PROPERTY DEFINED.—For purposes of this sec-
13 tion, the term ''property'' includes all real property (in-
14 cluding leaseholds) and all personal property (including
15 computers, furniture, fixtures, equipment, books, ac-
16 counts, records, reports, files, memoranda, paper, reports
17 of examination, work papers and correspondence related
18 to such reports, and any other information or materials).
19 (b) IN GENERAL.—
20 (1) OTS AND OCC.—Not later than 90 days
21 after the transfer date, all property of the Office of
22 the Comptroller of the Currency and the Office of
23 Thrift Supervision shall be transferred to FIRA.
24 (2) BOARD OF GOVERNORS.—

(A) IN GENERAL.—Not later than 90 days after the transfer date, all property of the Board of Governors that FIRA (in consultation with the Board of Governors) determines is used, on the day before the transfer date, to perform or support the functions of the Board of Governors transferred to FIRA under this Act, shall be transferred to FIRA.

(B) FEDERAL RESERVE BANKS.—For purposes of this paragraph, the term ''property of the Board of Governors'' includes any property of a Federal reserve bank that FIRA (in consultation with the Board of Governors) determines is used, on the day before the transfer date, to perform or support the functions of the Board of Governors transferred to FIRA under this Act.

(3) CORPORATION.—Not later than 90 days after the transfer date, all property of the Corporation that FIRA (in consultation with the Corporation) determines is used, on the day before the transfer date, to perform or support the functions of the Corporation transferred to FIRA under this Act, shall be transferred to FIRA.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Chairperson by this section shall be transferred to the Chairperson together with the property.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 354. FUNDS TRANSFERRED.

Except to the extent that funds are necessary to dispose of the affairs of the Office of the Comptroller of the Currency and the Office of Thrift Supervision under section 355, all funds that, on the day before the transfer date, are available to the Comptroller of the Currency and the Director of the Office of Thrift Supervision to pay the expenses of the Office of the Comptroller of the Currency and the Office of Thrift Supervision shall be transferred to FIRA on the transfer date and deposited into the Financial Institutions Regulatory Administration Fund established under section 335.

SEC. 355. DISPOSITION OF AFFAIRS.

(a) IN GENERAL.—During the 90-day period beginning on the transfer date, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the

Board of Governors, and the Board of Directors of the Corporation—

(1) shall, solely for the purpose of winding up the affairs of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors, and the Corporation, respectively, relating to any function transferred to FIRA under this title—

(A) manage the employees of such agencies and provide for the payment of the compensation and benefits of the employees that accrue before the transfer date; and

(B) manage any property of such agencies, until the date that the property is transferred under section 353; and

(2) may take any other action necessary to wind up the affairs of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors, and the Corporation, respectively, relating to the functions transferred under this title.

(b) AUTHORITY AND STATUS OF COMPTROLLER AND DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfer of functions under this title, during the 90-day

period beginning on the transfer date, the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Comptroller of the Currency and the Director of the Office of Thrift Supervision, respectively, on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of the Comptroller of the Currency and the Office of Thrift Supervision; and

(B) to carry out the transfer under this title during such 90-day period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Comptroller of the Currency and the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as officers of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Comptroller of the Currency and the Director of the Office of Thrift Supervision, respectively, received on the day before the transfer date.

SEC. 356. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors, or the Corporation in connection with functions transferred to FIRA under this title, shall—

(1) continue to provide such services, subject to reimbursement by FIRA, until the transfer of functions under this title is complete; and

(2) consult with the Chairperson to coordinate and facilitate a prompt and orderly transition.

Subtitle F—Termination of Federal Thrift Charter

SEC. 361. TERMINATION OF FEDERAL SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—The Director of the Office of Thrift Supervision, or the Chairperson, as the case may be, may not issue a charter for a Federal savings association under section 5 of the Home Owners' Loan Act (12 U.S.C. 1464).

(b) CONFORMING AMENDMENT.—Section 5(a) of the Home Owner's Loan Act (12 U.S.C. 1464(a)) is amended to read as follows:

"(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Director is authorized, under such regulations as the Director may prescribe, to provide for the examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.".

(c) PROSPECTIVE REPEAL.—Effective on the date on which the Chairperson determines that no Federal savings associations exist, section 5 of the Home Owner's Loan Act (12 U.S.C. 1464) is repealed.

SEC. 362. BRANCHING.

(a) DEFINITION.—In this subsection, the term "covered savings association" means a depository institution that—

(1) is a savings association on the date of enactment of this Act; and

(2) becomes a bank not later than 1 year after the date of enactment of this Act, or is treated as

a bank for purposes of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

(b) CONTINUATION OF OPERATION OF BRANCHES PERMITTED.—

(1) IN GENERAL.—Notwithstanding any provision of the Federal Deposit Insurance Act, the Bank Holding Company Act of 1956, or any other provision of Federal or State law, a covered savings association may continue to operate any branch or agency that the covered savings association—

(A) operated as a branch or agency on or before the date of enactment of this Act; or

(B) was in the process of establishing as a branch or agency on or before the date of enactment of this Act.

(c) ESTABLISHING A BRANCH OR AGENCY.—For purposes of subsection (b), a covered savings association is in the process of establishing a branch or agency, if the covered savings association—

(1) has received approval from the Chairperson to establish the branch or agency;

(2) has pending with the Chairperson an application or notice to establish the branch or agency;

(3) has a legal and contractual obligation to establish the branch or agency; or

(4) has received authority from the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) to establish the branch or agency in connection with the assumption of liabilities or an acquisition of an insured depository institution pursuant to subsection (f) or (k) of section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or section 408(m) of the National Housing Act (as in effect before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

Subtitle G—Additional Powers of the Corporation

SEC. 371. DEPOSIT INSURANCE REFORMS.

(a) SIZE DISTINCTIONS.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) is amended—

(1) by striking subparagraph (D); and

(2) by redesignating subparagraph (C) as subparagraph (D).

(b) ANNUAL ASSESSMENT RATE.—Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)), as amended by this section, is amended by inserting after subparagraph (B) the following:

"(C) ASSESSMENT BASE.—The assessment of any insured depository institution imposed under this subsection shall be an amount equal to the product of—

"(i) an assessment rate established by the Corporation; and

"(ii) the amount of the average total assets of the insured depository institution during the assessment period, minus the amount of the average tangible equity of the insured depository institution during the assessment period.".

SEC. 372. MANAGEMENT OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

Section 2(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)) is amended—

(1) in subparagraph (A), by striking "Comptroller of the Currency" and inserting "Chairman of the Board of Governors of the Federal Reserve System"; and

(2) in subparagraph (B), by striking "Director of the Office of Thrift Supervision" and inserting "the Chairperson of FIRA".

TITLE IV—REGULATION OF ADVISERS TO HEDGE FUNDS AND OTHERS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Private Fund Investment Advisers Registration Act of 2009''.

SEC. 402. DEFINITIONS.

Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

''(29) The term 'private fund' means an investment fund that—

''(A) would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)), but for section 3(c)(1) or 3(c)(7) of that Act; and

''(B) either—

''(i) is organized or otherwise created under the laws of the United States or of a State; or

''(ii) has 10 percent or more of its outstanding securities owned by United States persons.

''(30) The term 'foreign private adviser' means any investment adviser who—

"(A) has no place of business in the United States;

"(B) has fewer than 15 clients who are domiciled in or residents of the United States;

"(C) has assets under management attributable to clients who are domiciled in or residents of the United States of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

"(D) neither holds itself out generally to the public in the United States as—

"(i) an investment adviser, nor acts as an investment adviser to any investment company registered under the Investment Company Act of 1940; or

"(ii) a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.".

SEC. 403. ELIMINATION OF PRIVATE ADVISER EXEMPTION; LIMITED EXEMPTION FOR FOREIGN PRIVATE ADVISERS; LIMITED INTRASTATE EXEMPTION.

Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) in paragraph (1), by inserting ", other than an investment adviser who acts as an investment adviser to any private fund," before "all of whose";

(2) by striking paragraph (3) and inserting the following:

"(3) any investment adviser that is a foreign private adviser;"; and

(3) in paragraph (6)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(C) a private fund.".

SEC. 404. COLLECTION OF SYSTEMIC RISK DATA; REPORTS; EXAMINATIONS; DISCLOSURES.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b) RECORDS AND REPORTS OF PRIVATE FUNDS.—

"(1) IN GENERAL.—The Commission may require any investment adviser registered under this title—

"(A) to maintain such records of, and file with the Commission such reports regarding, private funds advised by the investment adviser, as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk by the Agency for Financial Stability; and

"(B) to provide or make available to the Agency for Financial Stability those reports or records or the information contained therein.

"(2) TREATMENT OF RECORDS.—The records and reports of any private fund provided to an investment adviser registered under this title who provides investment advice to that private fund shall be deemed to be the records and reports of the investment adviser.

"(3) REQUIRED INFORMATION.—The records and reports required to be filed with the Commission under this subsection shall include, for each private

fund advised by the investment adviser, a description of—

"(A) the amount of assets under management, use of leverage;

"(B) counterparty credit risk exposure;

"(C) trading and investment positions;

"(D) valuation methodologies of the fund;

"(E) types of assets held;

"(F) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

"(G) trading practices; and

"(H) such other information as the Commission, in consultation with the Agency for Financial Stability, deems necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

"(4) MAINTENANCE OF RECORDS.—An investment adviser registered under this title shall maintain such records of private funds advised by the investment adviser for such period or periods as the Commission, by rule, may prescribe as necessary and appropriate in the public interest and for the protec-

tion of investors, or for the assessment of systemic risk.

"(5) EXAMINATION OF RECORDS.—

"(A) PERIODIC AND SPECIAL EXAMINATIONS.—The Commission—

"(i) shall conduct periodic inspections of all records of private funds maintained by an investment adviser registered under this title in accordance with a schedule established by the Commission; and

"(ii) may conduct at any time and from time to time such additional, special, and other examinations as the Commission may prescribe as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.

"(B) AVAILABILITY OF RECORDS.—An investment adviser registered under this title shall make available to the Commission any copies or extracts from such records as may be prepared without undue effort, expense, or delay, as the Commission or its representatives may reasonably request.

"(6) INFORMATION SHARING.—The Commission shall make available to the Agency for Financial Stability copies of all reports, documents, records, and information filed with or provided to the Commission by an investment adviser under this subsection as the Agency for Financial Stability may consider necessary for the purpose of assessing the systemic risk posed by a private fund. Information in all such reports, documents, records, and information in this subsection shall be kept strictly confidential.

"(7) CONFIDENTIALITY OF REPORTS.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any supervisory report or information contained therein required to be filed with the Commission under this subsection, except that nothing in this subsection authorizes the Commission—

"(A) to withhold information from Congress, upon an agreement of confidentiality; or

"(B) prevent the Commission from complying with—

"(i) a request for information from any other Federal department or agency or any self-regulatory organization requesting

the report or information for purposes within the scope of its jurisdiction; or

"(ii) an order of a court of the United States in an action brought by the United States or the Commission.

"(8) PUBLIC INFORMATION EXCEPTION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(9) REPORT TO CONGRESS.—The Commission shall report annually to Congress on how the Commission has used the data collected pursuant to this subsection to monitor the markets for the protection of investors and the integrity of the markets.".

SEC. 405. DISCLOSURE PROVISION ELIMINATED.

Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80(b)–10) is amended by striking subsection (c).

SEC. 406. CLARIFICATION OF RULEMAKING AUTHORITY.

Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended—

(1) in subsection (a)—

(A) by striking the second sentence;

(B) by inserting before the period at the end of the first sentence the following: ", including rules and regulations defining technical, trade, and other terms used in this title.";

(C) by inserting "(1) IN GENERAL.—" before "The Commission"; and

(D) by adding at the end the following:

"(2) COMMISSION AUTHORITY.—For the purposes of its rules and regulations, the Commission may—

"(A) classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters; and

"(B) ascribe different meanings to terms (including the term 'client') used in different sections of this title, as the Commission determines necessary to effect the purposes of this title."; and

(2) by adding at the end the following:

"(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the Agency for Financial Stability, not later than 6 months after the date of enactment of the Private Fund Investment Advisers

Registration Act of 2009, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) and the Commodity Exchange Act (7 U.S.C. 1a et seq.).''.

SEC. 407. EXEMPTIONS OF VENTURE CAPITAL FUND ADVISERS.

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

''(l) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund. Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules to identify and define the term 'venture capital fund' for purposes of this subsection.''.

SEC. 408. EXEMPTION OF AND RECORD KEEPING BY PRIVATE EQUITY FUND ADVISERS.

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

"(m) EXEMPTION OF AND REPORTING BY PRIVATE EQUITY FUND ADVISERS.—

"(1) IN GENERAL.—Except as provided in this subsection, no investment adviser shall be subject to the registration or reporting requirements of this title with respect to the provision of investment advice relating to a private equity fund.

"(2) MAINTENANCE OF RECORDS AND ACCESS BY COMMISSION.—Not later than 6 months after the date of enactment of this subsection, the Commission shall issue final rules—

"(A) to require investment advisers described in paragraph (1) to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary and appropriate in the public interest and for the protection of investors; and

"(B) to identify and define the term 'private equity fund' for purposes of this subsection.".

SEC. 409. FAMILY OFFICES.

Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended by striking "or (G)" and inserting the following: "(G) any family office, as defined by rule, regulation, or order of the Com-

mission, in accordance with the purposes of this title; or (H)''.

SEC. 410. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a)(1)(A) of the Investment Advisers Act (15 U.S.C. 80b-3a(a)(1)(A)) is amended by striking ''$25,000,000'' and inserting ''$100,000,000''.

SEC. 411. CUSTODY OF CLIENT ASSETS.

The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

''SEC. 223. INDEPENDENT CUSTODY OF CLIENT ASSETS.

''The Commission shall prescribe rules requiring investment advisers registered under this title to use an independent custodian to hold client assets, where necessary and appropriate in the public interest and for the protection of investors.''.

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD FOR INFLATION.

The Commission shall, by rule—

(1) increase the financial threshold for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, by calculating an amount that is greater than the

amount in effect on the date of enactment of this Act of $200,000 income for a natural person (or $300,000 for a couple) and $1,000,000 in assets, as the Commission determines is appropriate and in the public interest, in light of price inflation since those figures were determined; and

(2) adjust that threshold not less frequently than once every 5 years, to reflect the percentage increase in the cost of living.

SEC. 413. STUDIES AND REPORTS.

The Comptroller General of the United States shall conduct a study on—

(1) the appropriate criteria for determining the financial thresholds or other criteria needed to qualify for accredited investor status and eligibility to invest in hedge funds, and shall submit a report to Congress on the results of such study not later than 1 year after the date of enactment of this Act;

(2) the feasibility of forming a self-regulatory organization to oversee hedge funds, private equity funds, and venture capital funds, and shall submit a report to Congress on the results of such study not later than 1 year after the date of enactment of this Act; and

(3) the state of short selling in the stock market, with particular attention to the impact of recent rule changes and the incidence of the failure to deliver shares sold short, and shall submit a report to Congress on the results of such study not later than 2 years after the date of enactment of this Act.

TITLE V—INSURANCE

Subtitle A—Office of National Insurance

SEC. 501. SHORT TITLE.

This subtitle may be cited as the ''Office of National Insurance Act of 2009''.

SEC. 502. ESTABLISHMENT OF OFFICE OF NATIONAL INSURANCE.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of subtitle I of title 31, United States Code, is amended—

(1) by redesignating section 312 as section 315;

(2) by redesignating section 313 as section 312; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

"SEC. 313. OFFICE OF NATIONAL INSURANCE.

"(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of National Insurance.

"(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

"(c) FUNCTIONS.—

"(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office, pursuant to the direction of the Secretary, shall have the authority—

"(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

"(B) to recommend to the Agency for Financial Stability that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a specified financial company, as such term is defined under title I of the Restoring American Financial Stability Act of 2009;

"(C) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

"(D) to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors and assisting the Secretary in negotiating International Insurance Agreements on Prudential Measures;

"(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures;

"(F) to consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance; and

"(G) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

"(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

"(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as such insurance is determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91).

"(e) GATHERING OF INFORMATION.—

"(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office may—

"(A) receive and collect data and information on and from the insurance industry and insurers;

"(B) enter into information-sharing agreements;

"(C) analyze and disseminate data and information; and

"(D) issue reports regarding all lines of insurance except health insurance.

"(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or

information that the Office may reasonably require in carrying out the functions described under subsection (c).

"(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that the Office may establish, whether by order or rule.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or any affiliate of an insurer, the Office shall coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, individually or collectively, another regulatory agency, or publicly available sources. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

"(5) CONFIDENTIALITY.—

"(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

"(C) INFORMATION SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State in-

surance regulators, individually or collectively, through an information sharing agreement that—

"(i) shall comply with applicable Federal law; and

"(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

"(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

"(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the

United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

"(f) PREEMPTION OF STATE INSURANCE MEASURES.—

"(1) STANDARD.—A State insurance measure shall be preempted if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

"(A) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to an international insurance agreement on prudential measures than a United States insurer domiciled, licensed, or otherwise admitted in that State; and

"(B) is inconsistent with an International Insurance Agreement on Prudential Measures.

"(2) DETERMINATION.—

"(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the Director shall—

"(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

"(ii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable International Insurance Agreement on Prudential Measures;

"(iii) provide interested parties a reasonable opportunity to submit written comments to the Office; and

"(iv) consider any comments received.

"(B) SCOPE OF REVIEW.—For purposes of this subsection, the determination of the Director regarding State insurance measures shall be limited to the subject matter contained within the international insurance agreement on prudential measure involved.

"(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the Director shall—

"(i) notify the appropriate State of the determination and the extent of the inconsistency;

"(ii) establish a reasonable period of time, which shall not be less than 30 days,

before the determination shall become effective; and

"(iii) notify the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of the inconsistency.

"(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

"(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

"(B) notify the appropriate State.

"(4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.

"(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review).

1 "(h) REGULATIONS, POLICIES, AND PROCEDURES.—
2 The Secretary may issue orders, regulations, policies, and
3 procedures to implement this section.
4 "(i) CONSULTATION.—The Director shall consult
5 with State insurance regulators, individually or collec-
6 tively, to the extent the Director determines appropriate,
7 in carrying out the functions of the Office.
8 "(j) SAVINGS PROVISIONS.—Nothing in this section
9 shall—
10 "(1) preempt—
11 "(A) any State insurance measure that
12 governs any insurer's rates, premiums, under-
13 writing, or sales practices;
14 "(B) any State coverage requirements for
15 insurance;
16 "(C) the application of the antitrust laws
17 of any State to the business of insurance; or
18 "(D) any State insurance measure gov-
19 erning the capital or solvency of an insurer, ex-
20 cept to the extent that such State insurance
21 measure results in less favorable treatment of a
22 non-United State insurer than a United States
23 insurer;

"(2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2009; or

"(3) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

"(k) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance.

"(l) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the insurance industry, any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), and any other information as deemed relevant by the Director or as requested by such Committees.

"(m) STUDY AND REPORT ON REGULATION OF INSURANCE.—

"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

"(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

"(A) Systemic risk regulation with respect to insurance.

"(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk .

"(C) Consumer protection for insurance products and practices, including gaps in state regulation.

"(D) The degree of national uniformity of state insurance regulation.

"(E) The regulation of insurance companies and affiliates on a consolidated basis.

"(F) International coordination of insurance regulation.

"(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

"(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

"(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

"(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

"(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

"(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

"(F) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

"(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall

also contain any legislative, administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

"(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with the National Association of Insurance Commissioners, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.

"(n) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary.

"(o) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

"(1) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

"(2) INSURER.—The term 'insurer' means any person engaged in the business of insurance, including reinsurance.

"(3) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The term 'International Insurance Agreement on Prudential Measures' means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance.

"(4) NON-UNITED STATES INSURER.—The term 'non-United States insurer' means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

"(5) OFFICE.—The term 'Office' means the Office of National Insurance established by this section.

"(7) STATE INSURANCE MEASURE.—The term 'State insurance measure' means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

"(8) STATE INSURANCE REGULATOR.—The term 'State insurance regulator' means any State regulatory authority responsible for the supervision of insurers.

"(9) UNITED STATES INSURER.—The term 'United States insurer' means—

"(A) an insurer that is organized under the laws of a State; or

"(B) a United States branch of a non-United States insurer.

"(p) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

"SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL MEASURES.

"(a) IN GENERAL.—The Secretary of the Treasury is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.

"(b) SAVINGS PROVISION.—Nothing in this section or section 313 shall be construed to affect the development and coordination of United States international trade policy or the administration of the United States trade agreements program. It is to be understood that the negotiation of International Insurance Agreements on Prudential Measures under such sections is consistent with the requirement of this subsection.

"(c) CONSULTATION.—The Secretary shall consult with the United States Trade Representative on the nego-

tiation of International Insurance Agreements on Prudential Measures, including prior to initiating and concluding any such agreements.''.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking ''; and'' and inserting a semicolon;

(2) in paragraph (8)(C), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new paragraph:

''(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

''Sec. 312. Terrorism and financial intelligence.
''Sec. 313. Office of National Insurance.
''Sec. 314. International insurance agreements on prudential measures.
''Sec. 315. Continuing in office.''.

Subtitle B—State-based Insurance Reform

SEC. 511. SHORT TITLE.

This subtitle may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2009''.

SEC. 512. EFFECTIVE DATE.

Except as otherwise specifically provided in this subtitle, this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle.

PART I—NONADMITTED INSURANCE

SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this subtitle, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 522. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to

be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—With respect to section 521 and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this subtitle, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other

equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 521(b) of this subtitle that include alternative nationwide uniform eligibility requirements; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 526. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this subtitle;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided

under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the findings of the study not later than 30 months after the effective date of this subtitle.

SEC. 527. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) ADMITTED INSURER.—The term ''admitted insurer'' means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) AFFILIATE.—The term ''affiliate'' means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) AFFILIATED GROUP.—The term ''affiliated group'' means any group of entities that are all affiliated.

(4) CONTROL.—An entity has ''control'' over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) EXEMPT COMMERCIAL PURCHASER.—The term ''exempt commercial purchaser'' means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the

percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) HOME STATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''home State'' means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) AFFILIATED GROUPS.—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term ''home State'' means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that

has the largest percentage of premium attributed to it under such insurance contract.

(7) INDEPENDENTLY PROCURED INSURANCE.—The term ''independently procured insurance'' means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners or any successor entity.

(9) NONADMITTED INSURANCE.—The term ''nonadmitted insurance'' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) NON-ADMITTED INSURANCE MODEL ACT.—The term ''Non-Admitted Insurance Model Act'' means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) NONADMITTED INSURER.—The term ''nonadmitted insurer'' means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(12) QUALIFIED RISK MANAGER.—The term ''qualified risk manager'' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has 1 of the following designations:

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as ''CPCU'') issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(13) PREMIUM TAX.—The term ''premium tax'' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government en-

tity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(14) SURPLUS LINES BROKER.—The term ''surplus lines broker'' means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

PART II—REINSURANCE

SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not

the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this part; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 532. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation,

such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 533. DEFINITIONS.

For purposes of this part, the following definitions shall apply:

(1) CEDING INSURER.—The term ''ceding insurer'' means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms ''State of domicile'' and ''domiciliary State'' means, with respect to an insurer or reinsurer, the State in which

the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term ''reinsurance'' means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term ''reinsurer'' means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

PART III—RULE OF CONSTRUCTION

SEC. 541. RULE OF CONSTRUCTION.

Nothing in this subtitle or amendments to this subtitle shall be construed to modify, impair, or supersede the

application of the antitrust laws. Any implied or actual conflict between this subtitle and any amendments to this subtitle and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

SEC. 542. SEVERABILITY.

If any section or subsection of this subtitle, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this subtitle, and the application of the provision to any other person or circumstance, shall not be affected.

TITLE VI—IMPROVEMENTS TO REGULATION OF BANK HOLDING COMPANIES AND DEPOSITORY INSTITUTIONS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Bank and Thrift Holding Company and Depository Institution Regulatory Improvements Act of 2009''.

SEC. 602. DEFINITION.

In this title—

(1) the term ''commercial firm'' means any entity that derived not less than 15 percent of the consolidated annual gross revenues of the entity, including all affiliates of the entity, from engaging, on an on-going basis, in activities that are not financial in

nature or incidental to activities that are financial in nature, as provided in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), during not fewer than 3 of the 4 quarters preceding the date on which an application is filed with the Corporation, as described in paragraph (2); and

(2) the term ''transfer date'' has the same meaning as in section 302.

SEC. 603. MORATORIUM AND STUDY ON TREATMENT OF CREDIT CARD BANKS, INDUSTRIAL LOAN COMPANIES, AND CERTAIN OTHER COMPANIES UNDER THE BANK HOLDING COMPANY ACT OF 1956.

(a) MORATORIUM.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''credit card bank'' means an institution described in section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(B) the term ''trust bank'' means an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D)); and

(C) the term ''industrial bank'' means an institution described in section 2(c)(2)(H) of

the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)).

(2) MORATORIUM ON PROVISION OF DEPOSIT INSURANCE.—The Corporation may not approve an application for deposit insurance under section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) that is received after November 10, 2009, for an industrial bank, a credit card bank, or a trust bank that is directly or indirectly owned or controlled by a commercial firm.

(3) CHANGE IN CONTROL.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the appropriate Federal banking agency shall disapprove a change in control, as provided in section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)), of an industrial bank, a credit card bank, or a trust bank if the change in control would result in direct or indirect control of the industrial bank, credit card bank, or trust bank by a commercial firm.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply to a change in control of an industrial bank, credit card bank, or trust bank that—

(i) is in danger of default, as determined by the appropriate Federal banking agency; or

(ii) results from the merger or whole acquisition of a commercial firm that directly or indirectly controls the industrial bank, credit card bank, or trust bank in a bona fide merger with or acquisition by another commercial firm, as determined by the appropriate Federal banking agency.

(4) SUNSET.—This subsection shall cease to have effect 3 years after the date of enactment of this Act.

(b) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EXCEPTIONS UNDER THE BANK HOLDING COMPANY ACT OF 1956.—

(1) STUDY REQUIRED.—The Comptroller General of the United States shall carry out a study to determine whether it is necessary, in order to strengthen the safety and soundness of institutions or the stability of the financial system, to eliminate the exceptions under section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) for institutions described in—

(A) section 2(a)(5)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(E));

(B) section 2(a)(5)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)(5)(F));

(C) section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(D) section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(F));

(E) section 2(c)(2)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(H)); and

(F) section 2(c)(2)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(B)).

(2) CONTENT OF STUDY.—

(A) IN GENERAL.—The study required under paragraph (1), with respect to the institutions referenced in each of subparagraphs (A) through (E) of paragraph (1), shall—

(i) identify each institution excepted from section 2 of the Bank Holding Com-

pany Act of 1956 (12 U.S.C. 1841) under each of the subparagraphs described in subparagraphs (A) through (E) of paragraph (1);

(ii) describe the size and location of each institution described in clause (i);

(iii) determine whether any holding company of each institution described in clause (i) is a commercial firm;

(iv) determine whether each institution described in clause (i) has any affiliates engaged in primarily financial activities;

(v) identify the Federal banking agency responsible for the supervision of each institution described in clause (i) on and after the transfer date;

(vi) determine the adequacy of the Federal bank regulatory framework applicable to each category of institution described in clause (i), including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between the institution, the

holding company of an institution, and any other affiliate of an institution; and

(vii) evaluate the potential consequences of subjecting the institutions described in clause (i) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability of credit, the stability of the financial system and the economy, the safe and sound operation of each category of institution, the costs to institutions and their holding companies, and the impact on activities in which such institutions, and the holding companies of such institutions, may engage.

(B) SAVINGS ASSOCIATIONS.—With respect to institutions described in paragraph (1)(F), the study required under paragraph (1) shall—

(i) determine the adequacy of the Federal bank regulatory framework applicable to such institutions, including any restrictions (including limitations on affiliate transactions or cross-marketing) that apply to transactions between such institutions, the holding company of such institutions,

and any other affiliate of such institutions; and

(ii) evaluate the potential consequences of subjecting the institutions described in paragraph (1)(F) to the requirements of the Bank Holding Company Act of 1956, including with respect to the availability of credit, the stability of the financial system and the economy, the safe and sound operation of such institutions, the costs to institutions and their holding companies, and the impact on activities in which such institutions, and the holding companies of such institutions, may engage.

(3) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SEC. 604. REPORTS AND EXAMINATIONS OF BANK HOLDING COMPANIES; REGULATION OF FUNCTIONALLY REGULATED SUBSIDIARIES.

(a) REPORTS BY BANK HOLDING COMPANIES.—Sections 5(c)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) USE OF EXISTING REPORTS.—FIRA shall, to the fullest extent possible, use—

"(i) reports that a bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

"(ii) information that is otherwise required to be reported publicly; and

"(iii) externally audited financial statements of such bank holding company or subsidiary."; and

(2) by adding at the end the following:

"(C) AVAILABILITY.—Upon the request of FIRA, a bank holding company or a subsidiary of a bank holding company shall promptly provide to FIRA any report described in subparagraph (B).".

(b) EXAMINATIONS OF BANK HOLDING COMPANIES.—Section 5(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(2)) is amended to read as follows:

"(2) EXAMINATIONS.—

"(A) IN GENERAL.—FIRA may make examinations of each bank holding company and each subsidiary of such a company to carry out the purposes of this Act, or any other provision of Federal law that FIRA has specific jurisdiction to enforce against such company or subsidiary, to prevent evasions thereof, and to monitor compliance by the bank holding company or subsidiary with applicable provisions of law.

"(B) FUNCTIONALLY REGULATED SUBSIDIARIES.—FIRA shall, to the extent possible, use the examination reports made by other Federal or State regulatory authorities relating to bank holding companies and their functionally regulated subsidiaries.".

(c) AUTHORITY TO REGULATE FUNCTIONALLY REGULATED SUBSIDIARIES OF BANK HOLDING COMPANIES.—The Bank Holding Company Act of 1956 (12

U.S.C. 1841 et seq.) is amended by striking section 10A (12 U.S.C. 1848a).

(d) ACQUISITIONS OF BANKS.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following:

"(7) FINANCIAL STABILITY.—In every case, FIRA shall take into consideration the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.".

(e) ACQUISITIONS OF NONBANKS.—

(1) NOTICE PROCEDURES.—Section 4(j)(2)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)(A)) is amended by striking "or unsound banking practices" and inserting "unsound banking practices, or risk to the stability of the United States banking or financial system".

(2) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—Section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B) is amended to read as follows:

"(B) APPROVAL NOT REQUIRED FOR CERTAIN FINANCIAL ACTIVITIES.—

"(i) IN GENERAL.—Except as provided in clause (ii), a financial holding company may commence any activity or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of FIRA.

"(ii) EXCEPTION.—A financial holding company may not commence, without the prior approval of FIRA—

"(I) a transaction in which the total assets to be acquired by the financial holding company exceed $25,000,000,000; or

"(II) the acquisition of a savings association, as provided in subsection (j).".

(f) BANK MERGER ACT TRANSACTIONS.—Section 18(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(5)) is amended, in the matter immediately following subparagraph (B), by striking "and the convenience and needs of the community to be served" and inserting "the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 605. REQUIREMENTS FOR FINANCIAL HOLDING COMPANIES TO REMAIN WELL CAPITALIZED AND WELL MANAGED.

(a) AMENDMENT.—Section 4(l)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(l)(1)) is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) by redesignating subparagraph (C) as subparagraph (D);

(3) by inserting after subparagraph (B) the following:

''(C) the bank holding company is well capitalized and well managed; and''; and

(4) in subparagraph (D)(ii), as so redesignated, by striking ''subparagraphs (A) and (B)'' and inserting ''subparagraphs (A), (B), and (C)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 606. STANDARDS FOR INTERSTATE ACQUISITIONS.

(a) ACQUISITION OF BANKS.—Section 3(d)(1)(A) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)(1)(A)) is amended by striking ''adequately cap-

italized and adequately managed'' and inserting ''well capitalized and well managed''.

(b) INTERSTATE BANK MERGERS.—Section 44(b)(4)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(b)(4)(B)) is amended by striking ''will continue to be adequately capitalized and adequately managed'' and inserting ''will be well capitalized and well managed''.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the transfer date.

SEC. 607. ENHANCING EXISTING RESTRICTIONS ON BANK TRANSACTIONS WITH AFFILIATES.

(a) AFFILIATE TRANSACTIONS.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking subparagraph (D) and inserting the following:

''(D) any investment fund with respect to which a member bank or affiliate thereof is an investment adviser; and''; and

(B) in paragraph (7)—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: '', including a purchase of assets subject to an agreement to repurchase'';

(ii) in subparagraph (C), by striking ", including assets subject to an agreement to repurchase,";

(iii) in subparagraph (D)—

(I) by inserting "or other debt obligations" after "acceptance of securities"; and

(II) by striking "or" at the end; and

(iv) by adding at the end the following:

"(F) a transaction with an affiliate that involves the borrowing or lending of securities, to the extent that the transaction causes a member bank to have credit exposure to the affiliate; or

"(G) a derivative transaction, as defined in paragraph (3) of section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b)), with an affiliate that causes a member bank to have credit exposure to the affiliate, to the extent of the potential credit exposure resulting from the transaction.";

(2) in subsection (c)—

(A) in paragraph (1), by striking ''the time of the transaction'' and inserting ''all times'';

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(D) in paragraph (3), as so redesignated, by inserting ''or other debt obligations'' after ''securities''; and

(3) in subsection (f)(2), by striking ''if it finds'' and all that follows through the end of the paragraph and inserting the following: ''if—

''(A) FIRA finds the exemption to be in the public interest and consistent with the purposes of this section, and notifies the Chairperson of the Federal Deposit Insurance Corporation of such finding; and

''(B) the Chairperson of the Federal Deposit Insurance Corporation does not object to the finding of FIRA under subparagraph (A), in writing, during the 60-day period beginning on the date of receipt of notice of the finding from FIRA, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.'';

(b) TRANSACTIONS WITH AFFILIATES.—Section 23B(e) of the Federal Reserve Act (12 U.S.C. 371c–1(e)) is amended—

(1) by striking the undesignated matter following subparagraph (B);

(2) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(4) by striking ''The Board'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), if FIRA finds that an exemption or exclusion is in the public interest and is consistent with the purposes of this section, and notifies the Chairperson of the Federal Deposit Insurance Corporation of such finding, FIRA'';

(5) in paragraph (1)(B)(ii), as so redesignated, by striking the comma at the end and inserting a period; and

(6) by adding at the end the following:

''(2) EXCEPTION.—FIRA may not grant an exemption or exclusion under this subsection, if, dur-

ing the 60-day period beginning on the date of receipt of notice of the finding from FIRA under paragraph (1), the Chairperson of the Federal Deposit Insurance Corporation objects, in writing, to such exemption or exclusion, based on a determination that the exemption presents an unacceptable risk to the Deposit Insurance Fund.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 608. ELIMINATING EXCEPTIONS FOR TRANSACTIONS WITH FINANCIAL SUBSIDIARIES.

(a) AMENDMENT.—Section 23A(e) of the Federal Reserve Act (12 U.S.C. 371c(e)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the transfer date.

SEC. 609. LENDING LIMITS APPLICABLE TO CREDIT EXPOSURE ON DERIVATIVE TRANSACTIONS, REPURCHASE AGREEMENTS, REVERSE REPURCHASE AGREEMENTS, AND SECURITIES LENDING AND BORROWING TRANSACTIONS.

Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''shall include'' and all that follows through the end of the paragraph and inserting the following: ''shall include—

''(A) all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person;

''(B) to the extent specified by FIRA, any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

''(C) any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities bor-

rowing transaction between the national banking association and the person;'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) the term 'derivative transaction' means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.''; and

(2) in subsection (d), by adding at the end the following:

''(3) Not later than 1 year after the date of enactment of this paragraph, the Comptroller of the Currency or FIRA, as the case may be, shall issue final rules to administer and carry out this section, with respect to credit exposures arising from any derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction.''.

SEC. 610. APPLICATION OF NATIONAL BANK LENDING LIMITS TO INSURED STATE BANKS.

(a) AMENDMENT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

''(y) APPLICATION OF LENDING LIMITS TO INSURED STATE BANKS.—Section 5200 of the Revised Statutes of the United States (12 U.S.C. 84) shall apply to every insured depository institution, in the same manner and to the same extent as if the insured depository institution were a national banking association.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 2 years after the date of enactment of this Act.

SEC. 611. RESTRICTION ON CONVERSIONS OF TROUBLED BANKS.

(a) CONVERSION OF A NATIONAL BANKING ASSOCIATION TO A STATE BANK.—The Act entitled ''An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes.'' (12 U.S.C. 214 et seq.) is amended by adding at the end the following:

''SEC. 10. PROHIBITION ON CONVERSION.

''A national banking association may not convert to a State bank or State savings association during any period in which the national banking association is subject

to a cease and desist order issued by, a memorandum of understanding entered into with, or any other enforcement action by the Comptroller of the Currency or FIRA, as the case may be, with respect to a significant supervisory matter.''.

(b) CONVERSION OF A STATE BANK TO A NATIONAL BANK.—Section 5154 of the Revised Statutes of the United States (12 U.S.C. 35) is amended by adding at the end the following: ''The Financial Institutions Regulatory Administration may not approve the conversion of a State bank or State savings association to a national banking association during any period in which the State bank or State savings association is subject to a cease and desist order issued by, a memorandum of understanding entered into with, or any other enforcement action by, a State supervisor with respect to a significant supervisory matter.''.

(c) CONVERSION OF A FEDERAL SAVINGS ASSOCIATION TO A NATIONAL OR STATE BANK OR STATE SAVINGS ASSOCIATION.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended by adding at the end the following:

''(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a national bank

or State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order issued by, a memorandum of understanding entered into with, or any other enforcement action by, the Office of Thrift Supervision or FIRA, as the case may be, with respect to a significant supervisory matter.''.

SEC. 612. DE NOVO BRANCHING INTO STATES.

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

''(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State; and''.

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

''(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and''.

SEC. 613. LENDING LIMITS TO INSIDERS.

(a) AMENDMENTS.—Section 22(h)(9)(D) of the Federal Reserve Act (12 U.S.C. 375b(9)(D)) is amended—

(1) in clause (i), by inserting before the period at the end the following: ", except that a member bank shall be deemed to have extended credit to a person if the member bank has credit exposure to that person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and that person"; and

(2) in clause (ii), by inserting "additional" after "make".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 614. LIMITATIONS ON PURCHASES OF ASSETS FROM INSIDERS.

(a) AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

"(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal

shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—

"(A) the transaction is on market terms; and

"(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

"(2) RULEMAKING.—FIRA may issue such rules as may be necessary to define terms and to carry out the purposes this subsection.".

(b) AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 22(d) of the Federal Reserve Act (12 U.S.C. 375) is amended to read as follows:

"(d) [Reserved]".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the transfer date.

SEC. 615. REGULATIONS REGARDING CAPITAL LEVELS OF HOLDING COMPANIES.

(a) CAPITAL LEVELS OF BANK HOLDING COMPANIES.—Section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)) is amended by inserting after ''regulations'' the following: ''(including regulations relating to the capital levels of bank holding companies)''.

(b) CAPITAL LEVELS OF SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(g)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(g)(1)) is amended by inserting after ''orders'' the following: ''(including regulations relating to capital requirements for savings and loan holding companies)''.

(c) INTERMEDIATE HOLDING COMPANIES.—FIRA may require a commercial firm that directly owns or controls more than 1 insured depository institution to establish an intermediate holding company to hold the insured depository institutions, in order to provide for the enhanced supervision of the insured depository institutions.

(d) SOURCE OF STRENGTH.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 38 (12 U.S.C. 1831o) the following:

''SEC. 38A. SOURCE OF STRENGTH.

''(a) IN GENERAL.—FIRA may require any company that directly or indirectly owns or controls an insured de-

1 pository institution to serve as a source of financial
2 strength for such institution.
3 ''(b) REPORTS.—FIRA may, from time to time, re-
4 quire a company that directly or indirectly owns or con-
5 trols an insured depository institution to submit a report,
6 under oath, for the purposes of—
7 ''(1) assessing the ability of such company to
8 comply with the requirement under paragraph (1);
9 and
10 ''(2) enforcing the compliance of such company
11 with the requirement under paragraph (1).
12 ''(c) RULES.—Not later than 1 year after the trans-
13 fer date, as defined in section 302 of the Restoring Amer-
14 ican Financial Stability Act of 2009, FIRA shall issue
15 final rules to carry out this section.
16 ''(d) DEFINITION.—In this section, the term 'source
17 of financial strength' means the ability of a company that
18 directly or indirectly owns or controls an insured deposi-
19 tory institution to provide financial assistance to such in-
20 sured depository institution in the event of financial dis-
21 tress.''.
22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the transfer date.

SEC. 616. ELIMINATION OF ELECTIVE INVESTMENT BANK HOLDING COMPANY FRAMEWORK.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) and (k) as subsections (i) and (j), respectively.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the transfer date.

TITLE VII—IMPROVEMENTS TO REGULATION OF OVER-THE-COUNTER DERIVATIVES MARKETS

SEC. 701. SHORT TITLE.

This title may be cited as the ''Over-the-Counter Derivatives Markets Act of 2009''.

SEC. 702. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in recent years, the global over-the-counter derivatives market in notional amounts outstanding has grown rapidly, from $91 trillion in 1998 to $592 trillion in 2008 according to the Bank for International Settlements;

(2) the interconnectedness of the country's largest financial institutions through the unregulated derivatives market raised significant concerns about

1 counterparty risk exposures during the recent finan-
2 cial crisis;
3 (3) a substantial amount of American taxpayer
4 money was used to make counterparty payments be-
5 cause there was insufficient margin and capital held
6 by large financial institutions;
7 (4) although derivatives can be used to manage
8 risk, they can also increase leverage and allow exces-
9 sive risk-taking because market participants can
10 take large positions on a relatively small capital
11 base;
12 (5) in the over-the-counter derivatives market,
13 margin requirements are set bilaterally and do not
14 take into account the risk that each trade imposes
15 on the rest of the financial system, thereby allowing
16 systemically important exposures to build up without
17 sufficient capital to mitigate associated risks to
18 American taxpayers and the financial system;
19 (6) in the recent crisis, fears about
20 counterparty risk exposures caused credit markets to
21 freeze, as market participants questioned the viabil-
22 ity of counterparties and the safety of their own as-
23 sets;
24 (7) lack of transparency about counterparty ex-
25 posures and valuation of derivatives positions made

it more difficult for regulators to respond to the crisis and made resolution of these positions more expensive for the taxpayer;

(8) bilaterally-executed derivatives contracts can provide key benefits to certain market participants and should be permitted under comprehensive regulation, but all derivatives activities should be accompanied by appropriate risk management and prudential standards;

(9) the derivatives market suffers from a lack of reliable and accurate transaction information that is available to the public, investors, market participants, and regulators, hampering surveillance and oversight of such markets;

(10) clearing more derivatives through well-regulated central counterparties will benefit the public by reducing costs and risks to American taxpayers, the financial system, and market participants;

(11) trading more derivatives on regulated exchanges should be encouraged because it will result in more price transparency, efficiency in execution, and liquidity; and

(12) the Group of 20 nations agreed that—

(A) all standardized over-the-counter derivative contracts should be traded on exchanges

or electronic trading platforms, where appropriate, and cleared through central counterparties by the end of calendar year 2012 at the latest;

(B) over-the-counter derivative contracts should be reported to trade repositories; and

(C) non-centrally cleared contracts should be subject to higher capital requirements.

(b) PURPOSES.—The purposes of this title are—

(1) to establish well-regulated markets for derivatives to increase transparency and reduce costs and risks to American taxpayers, the financial system, and market participants; and

(2) to promote the public interest, the protection of investors, the protection of market participants, and the maintenance of fair and orderly markets to assure—

(A) the prompt and accurate clearance and settlement of transactions in derivatives that can be cleared through a central counterparty;

(B) the prompt and accurate reporting of transactions to regulators and trade repositories;

(C) the availability to the public, investors, market participants, and regulators of reliable

and accurate quotation and transaction information in derivatives;

(D) economically efficient execution of transactions in swaps and security-based swaps; and

(E) fair competition among markets in the trading of swaps and security-based swaps.

Subtitle A—Regulation of Swap Markets

SEC. 711. DEFINITIONS.

(a) AMENDMENTS TO DEFINITIONS IN THE COMMODITY EXCHANGE ACT.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (9) through (34) as paragraphs (10) through (35), respectively;

(2) by adding after paragraph (8) the following:

"(9) DERIVATIVE.—The term 'derivative' means—

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

"(B) a swap.";

(3) by redesignating paragraph (35) (as redesignated by paragraph (1)) as paragraph (36);

(4) by adding after paragraph (34) (as so redesignated) the following:

1 ''(35) SWAP.—

2 ''(A) IN GENERAL.—Except as provided in
3 subparagraph (B), the term 'swap' means any
4 agreement, contract, or transaction that—

5 ''(i) is a put, call, cap, floor, collar, or
6 similar option of any kind for the purchase
7 or sale of, or based on the value of, 1 or
8 more interest or other rates, currencies,
9 commodities, securities, instruments of in-
10 debtedness, indices, quantitative measures,
11 or other financial or economic interests or
12 property of any kind;

13 ''(ii) provides for any purchase, sale,
14 payment, or delivery (other than a dividend
15 on an equity security) that is dependent on
16 the occurrence, nonoccurrence, or the ex-
17 tent of the occurrence of an event or con-
18 tingency associated with a potential finan-
19 cial, economic, or commercial consequence;

20 ''(iii) provides on an executory basis
21 for the exchange, on a fixed or contingent
22 basis, of 1 or more payments based on the
23 value or level of 1 or more interest or other
24 rates, currencies, commodities, securities,
25 instruments of indebtedness, indices, quan-

1 titative measures, or other financial or eco-
2 nomic interests or property of any kind, or
3 any interest therein or based on the value
4 thereof, and that transfers, as between the
5 parties to the transaction, in whole or in
6 part, the financial risk associated with a
7 future change in any such value or level
8 without also conveying a current or future
9 direct or indirect ownership interest in an
10 asset (including any enterprise or invest-
11 ment pool) or liability that incorporates the
12 financial risk so transferred, including any
13 agreement, contract, or transaction com-
14 monly known as an interest rate swap, a
15 rate floor, rate cap, rate collar, cross-cur-
16 rency rate swap, basis swap, currency
17 swap, total return swap, equity index swap,
18 equity swap, debt index swap, debt swap,
19 credit spread, credit default swap, credit
20 swap, weather swap, energy swap, metal
21 swap, agricultural swap, emissions swap,
22 or commodity swap;
23 ''(iv) is an agreement, contract, or
24 transaction that is, or in the future be-

comes, commonly known to the trade as a swap; or

"(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

"(B) EXCLUSIONS.—The term 'swap' does not include—

"(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

"(ii) any sale of a nonfinancial commodity or any security for deferred shipment or delivery, so long as such transaction is physically settled;

"(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

"(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange

registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

"(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis;

"(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

"(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)); or

"(viii) any agreement, contract, or transaction that is—

"(I) based on a security; and

"(II) entered into directly or through an underwriter, that term is as defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11)), by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

"(ix) any foreign exchange swap;

"(x) any foreign exchange forward;

"(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

"(xii) any security-based swap, other than a security-based swap as described in paragraph 38(C).

"(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement

that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).''; (5) in paragraph (13) (as so redesignated)—

(A) in subparagraph (A)—

(i) in clause (ii), by striking ''determined by the Commission'' and inserting ''determined jointly by the Commission and the Securities and Exchange Commission'';

(ii) in clause (v)—

(I) in subclause (I)—

(aa) by inserting ''net'' after ''total''; and

(bb) by inserting ''or'' after the semicolon;

(II) in subclause (II), by striking ''the obligations'' and all that follows through ''$1,000,000; and'' and inserting the following:

''(II) that——

''(aa) has total net assets exceeding $5,000,000; and'';

(iii) in clause (vii), by striking ''except that'' and all that follows through ''section 2(c)(2)(B)(ii);'' and inserting the following: ''except that such term does not include a State or an entity, political subdivision, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless the State, entity, political subdivision, instrumentality, agency, or department owns and invests on a discretionary basis $50,000,000 or more in investments, provided that, with respect to any State or entity, political subdivision, instrumentality, agency or department of a State, such amount is exclusive of any proceeds from any offering of municipal securities as defined in section 3(a)(29) of the

Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29));''; and

(iv) in clause (xi), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis'';

(v) in clause (xi), by striking ''an individual'' and all that follows through ''of—'' and inserting ''a natural person who—''; and

(vi) in clause (xi)—

(I) in subclause (I), by inserting ''owns and invests on a discretionary basis in excess of'' before ''$10,000,000''; and

(II) in subclause (II), by inserting ''owns and invests on a discretionary basis in excess of'' before ''$5,000,000''; and

(B) in subparagraph (C), by striking ''determines'' and inserting ''and the Securities and Exchange Commission may further jointly determine'';

(6) in paragraph (30) (as so redesignated)—

(A) by redesignating subparagraph (E) as subparagraph (G);

(B) in subparagraph (D), by striking ''and''; and

(C) by inserting after subparagraph (D) the following:

''(E) an alternative swap execution facility registered under section 5h;

''(F) a swap repository; and''; and

(7) by adding after paragraph (36) (as so redesignated) the following:

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

''(38) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

''(39) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise.

''(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either in-

dividually or in a fiduciary capacity, but not as a part of a regular business.

''(40) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person—

''(i) who is not a swap dealer; and

''(ii) whose outstanding swaps create net counterparty credit exposures (current or potential future exposures) to other market participants that would expose those other market participants to significant credit losses in the event of the person's default.

''(41) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)).

''(42) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(43) FIRA.—The term 'FIRA' means the Financial Institutions Regulatory Administration.

"(44) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)).

"(45) GOVERNMENT SECURITY.—The term 'government security' has the same meaning as in section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)).

"(46) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed at the inception of the contract.

"(47) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that solely involves the exchange of 2 different currencies on a specific date at a fixed rate agreed at the inception of the contract, and a reverse exchange of the same 2 currencies at a date further in the future and at a fixed rate agreed at the inception of the contract.

"(48) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-

based swap participant' has the same meaning as in section 3(a)(70) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(70)).

"(49) PERSON ASSOCIATED WITH A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—The term 'person associated with a swap dealer or major swap participant' or 'associated person of a swap dealer or major swap participant' means—

"(A) any partner, officer, director, or branch manager of such swap dealer or major swap participant (or any person occupying a similar status or performing similar functions);

"(B) any person directly or indirectly controlling, controlled by, or under common control with such swap dealer or major swap participant; or

"(C) any employee of such swap dealer or major swap participant, except that any person associated with a swap dealer or major swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 4s(b)(6) of this Act.

"(50) SWAP REPOSITORY.—The term 'swap repository' means any person that collects, calculates,

processes, or prepares information with respect to transactions or positions in swaps or security-based swaps.''.

(b) JOINT RULEMAKING ON FURTHER DEFINITION OF TERMS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly adopt a rule or rules further defining the terms ''swap'', ''security-based swap'', ''swap dealer'', ''security-based swap dealer'', ''major swap participant'', ''major security-based swap participant'', and ''eligible contract participant'' not later than 180 days after the effective date of this title.

(2) PREVENTION OF EVASIONS.—The Commodity Futures Trading Commission and the Securities and Exchange Commission may jointly prescribe rules defining the term ''swap'' or ''security-based swap'' to include transactions that have been structured to evade this title.

(c) JOINT RULEMAKING UNDER THIS TITLE.—

(1) UNIFORM RULES.—Rules and regulations prescribed jointly under this title by the Commodity Futures Trading Commission and the Securities and Exchange Commission shall be uniform.

(2) AGENCY FOR FINANCIAL STABILITY.—In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe uniform rules and regulations under any provision of this title in a timely manner, the Agency for Financial Stability, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, shall prescribe rules and regulations under such provision. A rule prescribed by the Agency for Financial Stability shall be enforced as if prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission and shall remain in effect until the Agency for Financial Stability rescinds the rule or until the effective date of a corresponding rule prescribed jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission in accordance with this section, whichever is later.

(3) DEADLINE.—The Agency for Financial Stability shall adopt rules and regulations under paragraph (2) within 180 days of the time that the Commodity Futures Trading Commission and the Securities and Exchange Commission failed to adopt uniform rules and regulations.

(4) TREATMENT OF SIMILAR PRODUCTS.—In adopting joint rules and regulations under this title, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products similarly.

(5) TREATMENT OF DISSIMILAR PRODUCTS.—Nothing in this title shall be construed to require the Commodity Futures Trading Commission and the Securities and Exchange Commission to adopt joint rules that treat functionally or economically different products identically.

(6) JOINT INTERPRETATION.—Any interpretation of, or guidance regarding, a provision of this title, shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission if this title requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by adding at the end the following: ''The Commission shall not have the authority to grant exemptions from the swap-related provisions of the Over-the-Counter Derivatives Markets

Act of 2009, except as expressly authorized under the provisions of that Act.''.

SEC. 712. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—The first sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended—

(1) by inserting ''the Over-the-Counter Derivatives Markets Act of 2009 and'' after ''otherwise provided in'';

(2) by striking ''subsections (c) through (i)'' and inserting ''subsections (c) and (f)''; and

(3) by striking ''involving contracts of sale'' and inserting ''involving swaps, or contracts of sale''.

(b) ADDITIONS.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'';

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a swap; or''.

(c) LIMITATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by amending subsection (g) to read as follows:

''(g) EXCLUSION FOR SECURITIES.—Notwithstanding any other provision of law, the Over-the-Counter

Derivatives Markets Act of 2009 shall not apply to, and the Commodity Futures Trading Commission shall have no jurisdiction under such Act (or any amendments to the Commodity Exchange Act made by such Act) with respect to, any security other than a security-based swap.''.

SEC. 713. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) REPEALS.—Subsections (d), (e), and (h) of section 2 of the Commodity Exchange Act (7 U.S.C. 2(d), 2(e), and 2(h)) are repealed.

(2) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is further amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act, other than subsections (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(G), (f), (g), and (j), sections 4a, 4b, 4b–1, 4c(a), 4c(b), 4o, 4r, 4s, 4t, 4u, 5, 5b, 5c, 5h, 6(c), 6(d), 6c, 6d, 8, 8a, 9, 12(e)(2), 12(f), 13(a), 13(b), 21, and 22(a)(4) and such other provisions of this Act as are applicable by their terms to registered entities and Commission registrants, governs or applies to a swap.

''(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is en-

1 tered into on or subject to the rules of a board of trade
2 designated as a contract market under section 5.''.
3 (3) CLEARING REQUIREMENT.—Section 2 of
4 the Commodity Exchange Act (7 U.S.C. 2) is fur-
5 ther amended by adding at the end the following:
6 ''(j) CLEARING REQUIREMENT.—
7 ''(1) SUBMISSION.—
8 ''(A) IN GENERAL.—Except as provided in
9 paragraph (9), any person who is a party to a
10 swap shall submit such swap for clearing to a
11 derivatives clearing organization that is reg-
12 istered under this Act.
13 ''(B) REQUIRED CONDITIONS.—The rules
14 of a derivatives clearing organization described
15 in subparagraph (A) shall—
16 ''(i) prescribe that all swaps with the
17 same terms and conditions are fungible
18 and may be offset with each other; and
19 ''(ii) provide for nondiscriminatory
20 clearing of a swap executed on or through
21 the rules of an unaffiliated designated con-
22 tract market or an alternative swap execu-
23 tion facility.
24 ''(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A derivatives clearing organization shall submit to the Commission for prior approval any group, category, type, or class of swaps, that the derivatives clearing organization seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days after submission of the request, unless the derivatives clearing organization submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with section 5b(c)(2). The Commission shall approve any such request if the Commission does not make such finding.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-

Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a derivatives clearing organization's submission for approval, pursuant to this paragraph, of a swap, or a group, category, type or class of swaps, that the derivative clearing organization seeks to accept for clearing.

"(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

"(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the swap (or the group, category, type, or class of swaps) and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the derivatives clearing organization that clears the swap, or group, category, type or class of swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A)—

"(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the swap, or group, category, type, or class of swaps, must be cleared pursuant to this subsection if the Commission finds that such clearing—

"(I) is consistent with section 5b(c)(2); and

"(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this title;

"(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the swap, or group, category, type, or class of swaps; or

"(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then it shall still be

1 permissible to clear such swap, or group,
2 category, type, or class of swaps.
3 ''(D) RULES.—Not later than 180 days
4 after the date of the enactment of the Over-the-
5 Counter Derivatives Markets Act of 2009, the
6 Commission shall adopt rules for reviewing,
7 pursuant to this paragraph, a derivatives clear-
8 ing organization's clearing of a swap, or a
9 group, category, type, or class of swaps, that
10 the Commission has accepted for clearing.
11 ''(4) SWAPS REQUIRED TO BE ACCEPTED FOR
12 CLEARING.—
13 ''(A) RULEMAKING.—Within 180 days of
14 the date of enactment of the Over-the-Counter
15 Derivatives Markets Act of 2009, the Commis-
16 sion and the Securities and Exchange Commis-
17 sion shall jointly adopt rules to further identify
18 swaps, or any group, category, type, or class of
19 swaps, that although not submitted for approval
20 under paragraph (2) but the Commission and
21 Securities Exchange Commission deem should
22 be accepted for clearing. In adopting such rules,
23 the Commission and the Securities and Ex-
24 change Commission shall take into account the
25 following factors:

"(i) The extent to which any of the terms of the swap, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

"(ii) The volume of transactions in the swap.

"(iii) The extent to which the terms of the swap are similar to the terms of other agreements, contracts, or transactions that are centrally cleared.

"(iv) Whether any differences in the terms of the swap, compared to other agreements, contracts, or transactions that are centrally cleared, are of economic significance.

"(v) Whether a derivatives clearing organization is prepared to clear the swap and such derivatives clearing organization has in place effective risk management systems.

"(vi) Any other factors the Commission and the Securities and Exchange Commission determine to be appropriate.

"(B) OTHER DESIGNATIONS.—The Commission may separately designate a particular swap or class of swaps as subject to the clearing requirement in paragraph (1), taking into account the factors described in clauses (i) through (vi) of subparagraph (A) and the joint rules adopted under such subparagraph.

"(5) PREVENTION OF EVASION.—The Commission and the Securities and Exchange Commission shall have authority to prescribe rules under this subsection, or issue interpretations of such rules, as necessary to prevent evasions of this title provided that any such rules or interpretations shall be issued jointly to be effective.

"(6) REQUIRED REPORTING.—

"(A) BOTH COUNTERPARTIES.—Both counterparties to a swap that is not accepted for clearing by any derivatives clearing organization shall report such a swap either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

"(B) TIMING.—Counterparties to a swap shall submit the reports required under sub-

paragraph (A)within such time period as the Commission may by rule or regulation prescribe.

"(7) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission not later than the later of —

"(i) 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission not later than the later of—

"(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on a board of trade designated as a contract market under section 5; or

"(ii) execute the transaction on an alternative swap execution facility registered under section 5h.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or alternative swap execution facility makes the swap available to trade.

"(9) EXEMPTIONS.—

"(A) IN GENERAL.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a swap from the requirements of paragraphs (1)

and (8), and any rules issued under this subsection, if—

"(i) no derivatives clearing organization registered under this Act will accept the swap for clearing; or

"(ii) 1 of the counterparties to the swap—

"(I) is not a swap dealer or major swap participant; and

"(II) does not meet the eligibility requirements of any derivatives clearing organization that clears the swap.

"(B) PRIOR CONSULTATION WITH THE SECURITIES AND EXCHANGE COMMISSION AND AGENCY FOR FINANCIAL STABILITY.—

"(i) CONSULTATION.—Before acting by rule or order to exempt a swap, or any group, category, type, or class of swaps from any requirement or rule under this section, the Commission shall consult with, and consider the views of, the Securities and Exchange Commission and the Agency for Financial Stability concerning whether such exemption is necessary and appro-

1 priate for the reduction of systemic risk
2 and in the public interest.
3 "(ii) PROHIBITION ON ISSUANCE.—
4 Not later than 45 days prior to issuing any
5 exemption under this paragraph, the Com-
6 mission shall send a notice to the Securi-
7 ties and Exchange Commission and the
8 Agency for Financial Stability describing
9 such exemption. If either the Securities
10 and Exchange Commission or the Agency
11 for Financial Stability issues a finding
12 under clause (i) that such an exemption
13 does not meet the standard described in
14 clause (i), the Commission may not issue
15 such exemption.
16 "(iii) DEADLINE.—Any finding by the
17 Securities and Exchange Commission or
18 the Agency for Financial Stability shall be
19 made and provided in writing to the Com-
20 mission not later than 45 days after the
21 date of receipt of notice of a proposed ex-
22 emption by the Commission.
23 "(iv) NONDELEGATION.—Action by
24 the Securities and Exchange Commission

or the Agency for Financial Stability under this subparagraph may not be delegated.

"(C) REQUESTED CLEARANCE.—If any party to a swap that is exempt from the clearing requirements of paragraph (1) requests that such swap be cleared by a derivatives clearing organization, and a derivatives clearing organization registered under this Act will accept such swap for clearing, then—

"(i) the exemption shall not apply; and

"(ii) the swap shall be cleared by such organization.".

(b) DERIVATIVES CLEARING ORGANIZATIONS.—

(1) IN GENERAL.—Subsections (a) and (b) of section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) are amended to read as follows:

"(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(10) with respect to—

"(1) a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option is—

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

"(B) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

"(2) a swap.

"(b) VOLUNTARY REGISTRATION.—

"(1) DERIVATIVES CLEARING ORGANIZATIONS.—A person that clears agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.

"(2) CLEARING AGENCIES.—A derivatives clearing organization may clear security-based swaps that are required to be cleared by a person who is registered as a clearing agency under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

(2) REQUIRED REGISTRATION.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

"(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(h) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing—

"(1) the clearing and settlement of swaps, as well as persons that are registered as derivatives clearing organizations for swaps under this subsection; and

"(2) the clearing and settlement of security-based swaps, as well as persons that are registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(i) CONSULTATION.—The Commission and the Securities and Exchange Commission shall consult with the appropriate Federal banking agencies prior to adopting rules under this section with respect to swaps.

"(j) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a derivatives clearing organization from registration under this section for the clearing of swaps if the Commission finds that such derivatives clearing organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, the Financial Institutions Regulatory Administration, or the appropriate governmental authorities in the organization's home country.

"(k) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each derivatives clearing organization shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall perform the following duties:

"(A) Report directly to the board or to the senior officer of the derivatives clearing organization.

"(B) Review the compliance of the derivatives clearing organization with the core principles established in section 5b(c)(2).

"(C) Consult with the board of the derivatives clearing organization, a body performing a function similar to that of a board, or the senior officer of the derivatives clearing organization, to resolve any conflicts of interest that may arise.

"(D) Administering the policies and procedures of the derivatives clearing organization required to be established pursuant to this section;

"(E) Ensuring compliance with this Act and the rules and regulations issued thereunder, including rules prescribed by the Commission pursuant to this section.

"(F) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this subparagraph include procedures related to the handling, manage-

ment response, remediation, retesting, and closing of noncompliance issues.

''(3) ANNUAL REPORTS REQUIRED.—

''(A) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the derivatives clearing organization with this Act and the policies and procedures of the organization, including the code of ethics and conflict of interest policies of the organization, in accordance with rules prescribed by the Commission.

''(B) SUBMISSION.—The compliance report required under subparagraph (A) shall accompany the financial reports of the derivatives clearing organization that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.''.

(3) CORE PRINCIPALS.—Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) is amended to read as follows:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

''(A) COMPLIANCE.—

"(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with the core principles established in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(ii) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this paragraph.

"(B) FINANCIAL RESOURCES.—

"(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources to discharge its responsibilities.

"(ii) MINIMUM RESOURCES.—The financial resources of each derivatives clearing organization shall, at a minimum, exceed the total amount that would—

"(I) enable the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that in extreme but plausible market conditions; and

"(II) enable the organization to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

"(i) STANDARDS.—Each derivatives clearing organization shall establish—

"(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of and participants in the organization; and

"(II) appropriate standards for determining eligibility of agreements,

contracts, or transactions submitted to the organization for clearing.

''(ii) ONGOING VERIFICATION.—Each derivatives clearing organization shall have procedures in place to verify that its participation and membership requirements are met on an ongoing basis.

''(iii) FAIR STANDARDS.—Each derivatives clearing organization's participation and membership requirements shall be objective, publicly disclosed, and permit fair and open access.

''(D) RISK MANAGEMENT.—

''(i) IN GENERAL.—Each derivatives clearing organization shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

''(ii) CREDIT EXPOSURE.—Each derivatives clearing organization shall measure its credit exposures to its members and participants at least once each business day and shall monitor such exposures throughout the business day.

"(iii) LIMITING EXPOSURE.—Through margin requirements and other risk control mechanisms, a derivatives clearing organization shall limit its exposures to potential losses from defaults by its members and participants so that the operations of the organization would not be disrupted and nondefaulting members or participants would not be exposed to losses that such members or participants cannot anticipate or control.

"(iv) MARGIN REQUIREMENTS.—The margin required by a derivatives clearing organization from its members and participants shall be sufficient to cover potential exposures in normal market conditions.

"(v) RISK-BASED MARGIN REQUIREMENTS.—The models and parameters used by a derivatives clearing organization in setting the margin requirements under clause (iv) shall be risk-based and reviewed regularly.

"(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

"(i) complete money settlements on a timely basis, and not less than once each business day;

"(ii) employ money settlement arrangements that eliminate or strictly limit the exposure of the organization to settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements;

"(iii) ensure money settlements are final when effected;

"(iv) maintain an accurate record of the flow of funds associated with each money settlement;

"(v) have the ability to comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations;

"(vi) for physical settlements, establish rules that clearly state the obligations of the organization with respect to physical deliveries; and

"(vii) identify and manage the risks from the obligations described under clause (vi).

"(F) TREATMENT OF FUNDS.—

"(i) SAFETY OF FUNDS.—Each derivatives clearing organization shall have standards and procedures designed to protect and ensure the safety of member and participant funds and assets.

"(ii) HOLDING OF FUNDS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner whereby risk of loss or of delay in the organization's access to the assets and funds is minimized.

"(iii) MINIMIZING RISKS.—Assets and funds invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

"(G) DEFAULT RULES AND PROCEDURES.—

"(i) INSOLVENCY ISSUES.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events when members or participants be-

come insolvent or otherwise default on their obligations to the organization.

"(ii) DEFAULT PROCEDURES.—The default procedures of each derivatives clearing organization shall be clearly stated, and shall ensure that the organization can take timely action to contain losses and liquidity pressures and to continue meeting its obligations.

"(iii) PUBLIC AVAILABILITY.—The default procedures of each derivatives clearing organization shall be publicly available.

"(H) ENFORCEMENT.—Each derivatives clearing organization shall—

"(i) maintain adequate arrangements and resources for the effective—

"(I) monitoring and enforcement of compliance with the rules of the organization; and

"(II) resolution of disputes; and

"(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant for violations of the rules of the organization.

"(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

"(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

"(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization; and

"(iii) periodically conduct tests to verify that backup resources are sufficient to ensure daily processing, clearing, and settlement.

"(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information necessary for the Commission to conduct oversight of the organization.

"(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain for a period of 5 years records of all activities related to the business of the organization as a derivatives clearing organization in a form and manner acceptable to the Commission.

"(L) PUBLIC INFORMATION.—

"(i) IN GENERAL.—Each derivatives clearing organization shall provide market participants with sufficient information to identify and evaluate accurately the risks and costs associated with using the services of the organization.

"(ii) AVAILABILITY OF RULES.—Each derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) of the organization available to market participants.

"(iii) ADDITIONAL DISCLOSURES.—Each derivatives clearing organization shall disclose publicly, and to the Commission, information concerning—

"(I) the terms and conditions of contracts, agreements, and transactions cleared and settled by the organization;

"(II) clearing and other fees that the organization charges its members and participants;

"(III) the margin-setting methodology and the size and composition of the financial resource package of the organization;

"(IV) other information relevant to participation in the settlement and clearing activities of the organization; and

"(V) daily settlement prices, volume, and open interest for all contracts settled or cleared by the organization.

"(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

"(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

"(ii) use relevant information obtained from the agreements in carrying out the risk management program of the organization.

"(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this chapter, a derivatives clearing organization shall avoid—

"(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

"(ii) imposing any material anticompetitive burden.

"(O) GOVERNANCE FITNESS STANDARDS.—

"(i) TRANSPARENCY.—Each derivatives clearing organization shall establish governance arrangements that are transparent in order to fulfill public interest requirements and to support the objectives of owners and participants.

"(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for directors, members of any discipli-

nary committee, and members of the organization, and any other persons with direct access to the settlement or clearing activities of the organization, including any parties affiliated with any of the persons described in this clause.

''(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the organization and establish a process for resolving such conflicts of interest.

''(Q) COMPOSITION OF THE BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee includes market participants.

''(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of its activities.''.

(4) REPORTING.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is further amended by adding after subsection (j), as added by this section, the following:

1 ''(k) REPORTING.—

2 ''(1) TRANSPARENCY.—

3 ''(A) IN GENERAL.—A derivatives clearing
4 organization that clears swaps shall provide to
5 the Commission and any swap repository des-
6 ignated by the Commission all information de-
7 termined by the Commission to be necessary to
8 perform its responsibilities under this Act.

9 ''(B) DATA COLLECTION REQUIRE-
10 MENTS.—The Commission shall adopt data col-
11 lection and maintenance requirements for swaps
12 cleared by derivatives clearing organizations
13 that are comparable to the corresponding re-
14 quirements for swaps accepted by swap reposi-
15 tories and swaps traded on alternative swap
16 execution facilities.

17 ''(C) REPORTS ON SECURITY-BASED SWAP
18 AGREEMENTS TO BE SHARED WITH THE SECU-
19 RITIES AND EXCHANGE COMMISSION.—A de-
20 rivatives clearing organization that clears secu-
21 rity-based swap agreements (as defined in sec-
22 tion 3(a)(76) of the Securities Exchange Act)
23 shall, upon request for the protection of inves-
24 tors and in the public interest, make available
25 to the Securities and Exchange Commission all

information relating to such security-based swap agreements.

"(D) SHARING OF INFORMATION.—Subject to section 8, the Commission shall share such information, upon request, with the Board, the Securities and Exchange Commission, the appropriate Federal banking agencies, the Agency for Financial Stability, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(2) PUBLIC INFORMATION.—A derivatives clearing organization that clears swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j).".

(5) TECHNICAL CHANGE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(A) by inserting ", central bank and ministries," after "department" each place that term appears; and

(B) by striking "futures authority." and inserting "futures authority,".

(c) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEAL.—Sections 402(d), 404, 407, 408(b), and 408(c)(2) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(d), 27b, 27e, 27f(b), and 27f(c)(2)) are repealed.

(2) LEGAL CERTAINTY.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

"SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCT.

"(a) EXCLUSION.—Except as provided in subsections (b) or (c), neither of the Commodity Exchange Act, nor the Securities Act of 1933, nor the Securities Exchange Act of 1934 shall apply to, and the Commodity Futures Trading Commission and the Securities and Exchange Commission shall not exercise regulatory authority under such statutes with respect to, an identified banking product.

"(b) EXCEPTION.—An appropriate Federal banking agency may except an identified banking product or a

bank under the jurisdiction of such agency from the exclusion in subsection (a) if the agency determines, in consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, that the product—

"(1) would meet the definition of swap in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)) or security-based swap in section 1a(38) of the Commodity Exchange Act(7 U.S.C. 1a(38)); and

"(2) has become known to the trade as a swap or security-based swap, or otherwise has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(c) ADDITIONAL EXCEPTIONS.—The exclusion in subsection (a) shall not apply to an identified banking product that—

"(1) is a product of a bank that is not under the regulatory jurisdiction of an appropriate Federal banking agency;

"(2) is a swap, or satisfies all the requirements for a swap, as such term and requirements are es-

tablished in section 1(a)(35) of the Commodity Exchange Act;

"(3) is a security-based swap, or satisfies all the requirements for a security-based swap, as such term and requirements are established in section 3(a)(68) of the Securities Exchange Act of 1934; or

"(4) has—

"(A) become known to the trade as a swap or security-based swap; or

"(B) been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), the Securities Act of 1933 (15 U.S.C. 77a et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).".

SEC. 714. PUBLIC REPORTING OF AGGREGATE SWAP DATA.

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

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

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggre-

gate data on swap trading volumes and positions from the sources set forth in paragraph (3).

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

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) derivatives clearing organizations pursuant to section 5b(k)(2);

"(B) swap repositories pursuant to section 21(c)(3); and

"(C) reports received by the Commission pursuant to section 4r.".

SEC. 715. SWAP REPOSITORIES.

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

"SEC. 21. SWAP REPOSITORIES.

"(a) REGISTRATION REQUIREMENT.—

"(1) IN GENERAL.—A person may register as a swap repository by filing with the Commission an application in such form as the Commission, by rule, may prescribe, containing the rules of the swap repository and such other information and documenta-

tion as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of this section.

"(2) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representative of the Commission.

"(3) SHARING OF INFORMATION WITH SECURITIES AND EXCHANGE COMMISSION.—Registered swap repositories shall make available to the Securities and Exchange Commission, upon request, all information relating to security-based swap agreements that are maintained by such swap repository.

"(b) STANDARD SETTING.—

"(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap repository.

"(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

"(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed

by the Commission on derivatives clearing organizations that clear swaps.

''(c) DUTIES.—A swap repository shall—

''(1) accept data prescribed by the Commission for each swap under subsection (b);

''(2) maintain such data in such form and manner and for such period as may be required by the Commission;

''(3) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

''(4) make available, on a confidential basis pursuant to section 8, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Agency for Financial Stability, the Securities and Exchange Commission, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

1 "(d) REQUIRED REGISTRATION FOR SECURITY-
2 BASED SWAP REPOSITORIES.—Any person that is re-
3 quired to be registered as a swap repository under this
4 section shall register with the Commission regardless of
5 whether that person also is registered with the Securities
6 and Exchange Commission as a security-based swap re-
7 pository.

8 "(e) HARMONIZATION OF RULES.—Not later than
9 180 days after the effective date of the Over-the-Counter
10 Derivatives Markets Act of 2009, the Commission and the
11 Securities and Exchange Commission shall jointly adopt
12 uniform rules governing persons that are registered under
13 this section and persons that are registered as security-
14 based swap repositories under the Securities Exchange
15 Act of 1934 (15 U.S.C. 78a et seq.), including uniform
16 rules that specify the data elements that shall be collected
17 and maintained by each repository.

18 "(f) EXEMPTIONS.—The Commission may exempt,
19 conditionally or unconditionally, a swap repository from
20 the requirements of this section if the Commission finds
21 that such swap repository is subject to comparable, com-
22 prehensive supervision and regulation on a consolidated
23 basis by the Securities and Exchange Commission, the Fi-
24 nancial Institutions Regulatory Administration, or the ap-

propriate governmental authorities in the organization's home country.''.

SEC. 716. REPORTING AND RECORDKEEPING.

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

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

''(a) IN GENERAL.—Any person who enters into a swap shall satisfy the reporting requirements of subsection (b), if such person—

''(1) did not clear the swap in accordance with section 2(j)(1); and

''(2) did not have data regarding the swap accepted by a swap repository in accordance with rules (including timeframes) adopted by the Commission under section 21.

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

''(2) keep books and records pertaining to the swaps held by the person in such form and manner and for such period as may be required by the Com-

mission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Agency for Financial Stability, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or a more comprehensive set of data than the Commission requires swap repositories to collect under section 21.''.

SEC. 717. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 716) the following:

''SEC. 4s. REGISTRATION AND REGULATION OF SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.

''(a) REGISTRATION.—It shall be unlawful for any person—

''(1) to act as a swap dealer unless such person is registered as a swap dealer with the Commission; and

''(2) to act as a major swap participant unless such person shall have registered as a major swap participant with the Commission.

"(b) REQUIREMENTS.—

"(1) IN GENERAL.—A person shall register as a swap dealer or major swap participant by filing a registration application with the Commission.

"(2) CONTENTS.—The application required under paragraph (1) shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a swap dealer or major swap participant, shall continue to report and furnish to the Commission such information pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c), (d), and (e), the Commission may prescribe rules applicable to swap dealers and major swap participants, including rules that limit the activities of swap dealers and major swap participants.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of swap dealers and major swap participants not later than

1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

"(6) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap dealer or a major swap participant to permit any person associated with a swap dealer or a major swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of such swap dealer or major swap participant, if such swap dealer or major swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

"(c) DUAL REGISTRATION.—

"(1) SWAP DEALER.—Any person that is required to be registered as a swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Securities and Exchange Commission as a security-based swap dealer.

"(2) MAJOR SWAP PARTICIPANT.—Any person that is required to be registered as a major swap participant under this section shall register with the Commission regardless of whether that person also

is a bank or is registered with the Securities and Exchange Commission as a major security-based swap participant.

"(d) JOINT RULES.—

"(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules for persons that are registered—

"(A) as swap dealers or major swap participants under this section; and

"(B) as security-based swap dealers or major security-based swap participants under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Securities and Exchange Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on swap dealers, major swap participants, security-based swap dealers, or major security-based swap participants for which the Financial Institutions Regulatory Administration is the primary financial regulatory agency. This provision

shall not be construed as limiting the authority of the Commission and the Securities and Exchange Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which the Financial Institutions Regulatory Administration is the primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as FIRA shall by rule or regulation prescribe to help ensure the safety and soundness of the swap dealer or major swap participant.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Each registered swap dealer and major swap participant for which the Financial Institutions Regulatory Administration is not the primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation

1 margin requirements as the Commission and
2 the Securities and Exchange Commission shall
3 by rule or regulation jointly prescribe to help
4 ensure the safety and soundness of the swap
5 dealer or major swap participant.
6 ''(2) JOINT RULES.—
7 ''(A) BANK SWAP DEALERS AND MAJOR
8 SWAP PARTICIPANTS.—Within 180 days of the
9 date of the enactment of the Over-the-Counter
10 Derivatives Markets Act of 2009, the Financial
11 Institutions Regulatory Administration, in con-
12 sultation with the Commission and the Securi-
13 ties and Exchange Commission, shall jointly
14 adopt rules imposing capital and margin re-
15 quirements under this subsection for swap deal-
16 ers and major swap participants for which
17 FIRA is the primary regulatory agency.
18 ''(B) NONBANK SWAP DEALERS AND
19 MAJOR SWAP PARTICIPANTS.—Within 180 days
20 of the date of the enactment of the Over-the-
21 Counter Derivatives Markets Act of 2009, the
22 Commission and the Securities and Exchange
23 Commission, in consultation with the Financial
24 Institutions Regulatory Administration, shall
25 jointly adopt rules imposing capital and margin

requirements under this subsection for swap dealers and major swap participants for which FIRA is not the primary financial regulatory agency.

"(3) CAPITAL.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—In setting capital requirements under this subsection for swap dealers and major swap participants for which the Financial Institutions Regulatory Authority is the primary financial regulatory agency, the Financial Institutions Regulatory Administration shall impose—

"(i) a capital requirement that is greater than zero for swaps that are cleared by a derivatives clearing organization; and

"(ii) to offset the greater risk to the swap dealer or major swap participant and to the financial system arising from the use of swaps that are not centrally cleared, substantially higher capital requirements for swaps that are not cleared by a registered derivatives clearing organization than for swaps that are centrally cleared.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than the capital requirements set by the Financial Institutions Regulatory Administration under this subsection.

"(C) BANK HOLDING COMPANIES.—Capital requirements set by the Financial Institutions Regulatory Administration for swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements for bank swap dealers and major swap participants set by FIRA under this subsection.

"(D) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) of the Commission to set financial responsibility rules for a futures commission merchant or introducing broker registered pursuant to section 4f(a) of this title (except for

section 4f(a)(3) thereof) in accordance with section 4f(b) of this title; or

"(II) the Securities and Exchange Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) of the Securities Exchange Act of 1934 (except for section 15(b)(11) thereof) in accordance with section 15(c)(3) of the Securities and Exchange Act of 1934.

"(ii) FUTURES COMMISSION MERCHANTS AND OTHER DEALERS.—A futures commission merchant, introducing broker, broker, or dealer shall maintain sufficient capital to comply with the stricter of any applicable capital requirements to which such merchant, introducing broker, broker, or dealer is subject to under this title or the Securities and Exchange Act of 1934.

"(4) MARGIN.—

"(A) BANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—

"(i) IN GENERAL.—The Financial Institutions Regulatory Administration shall

impose both initial and variation margin requirements under this subsection for swap dealers and major swap participants for which the Financial Institutions Regulatory Authority is the primary financial regulatory agency on all swaps that are not cleared by a registered derivatives clearing organization.

"(ii) EXEMPTION.—The Financial Institutions Regulatory Administration by rule or order, as FIRA deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a swap dealer or major swap participant for which FIRA is the primary financial regulatory agency from the requirements of this subsection and the rules issued under this subsection with regard to any swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(iii) PRIOR CONSULTATION WITH AGENCY FOR FINANCIAL STABILITY, THE COMMISSION, AND THE SECURITIES EXCHANGE COMMISSION.—

"(I) CONSULTATION.—Before acting by rule or order to exempt a swap from any requirement or rule under this subsection, the Financial Institutions Regulatory Administration shall consult with, and consider the views of, the Agency for Financial Stability, the Commission, and the Securities and Exchange Commission concerning whether such exemption is necessary and appropriate for the reduction of systemic risk and in the public interest.

"(II) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this subparagraph, the Financial Institutions Regulatory Administration shall send a notice to the Agency for Financial Stability describing such exemption. If the Agency for Financial Stability issues a finding under subclause (I) that such an exemption does not meet the standard described in subclause (I), FIRA may not issue such exemption.

"(III) DEADLINE.—Any finding by the Agency for Financial Stability shall be made and provided in writing to the Financial Institutions Regulatory Administration not later than 45 days after the date of receipt of notice of a proposed exemption by the Financial Institutions Regulatory Administration.

"(IV) NONDELEGATION.—Actions by the Agency for Financial Sta-

bility under this clause may not be delegated.

"(B) NONBANK SWAP DEALERS AND MAJOR SWAP PARTICIPANTS.—

"(i) IN GENERAL.—Margin requirements for swaps set by the Commission and the Securities and Exchange Commission under this subsection shall be as strict as or stricter than margin requirements for swaps set by the Financial Institutions Regulatory Administration.

"(ii) EXEMPTION.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a swap from the requirements of this subparagraph and the rules issued under this subparagraph with regard to any swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(iii) PRIOR CONSULTATION WITH THE SECURITIES AND EXCHANGE COMMISSION AND AGENCY FOR FINANCIAL STABILITY.—

"(I) CONSULTATION.—Before acting by rule or order to exempt a swap, or any group, category, type, or class of swaps from any requirement or rule under this section, the Commission shall consult with, and consider the views of, the Securities and Exchange Commission and the Agency for Financial Stability concerning whether such exemption is necessary and appropriate for the reduction of systemic risk and in the public interest.

"(II) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this paragraph, the Commission shall send a notice to the Securities and Exchange Commission and the Agency for Financial Stability describing such exemption. If either the Securities and Exchange Commission or the Agency for Financial Stability issues a finding under clause (i) that such an exemption does not meet the standard described in clause (i), the Commission may not issue such exemption.

"(III) DEADLINE.—Any finding by the Securities and Exchange Commission or the Agency for Financial Stability shall be made and provided in writing to the Commission not later than 45 days after the date of receipt of notice of a proposed exemption by the Commission.

"(IV) NONDELEGATION.—Action by the Securities and Exchange Commission or the Agency for Financial

Stability under this subparagraph may not be delegated.

"(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the Financial Institutions Regulatory Administration, the Commission, and the Securities Exchange Commission may permit the use of noncash collateral, as FIRA, the Commission, or the Securities Exchange Commission determines to be consistent with—

"(A) preserving the financial integrity of markets trading swaps; and

"(B) preventing systemic risk.

"(6) REQUESTED MARGIN.—If any party to a swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii) requests that such swap be margined, then—

"(A) the exemption shall not apply; and

"(B) the counterparty to such swap shall provide the requested margin.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation

regarding the transactions and positions and financial condition of such dealer or participant;

"(B) for which—

"(i) the Financial Institutions Regulatory Administration is the primary financial regulatory agency shall keep books and records of all activities related to its business as a swap dealer or major swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(ii) the Financial Institutions Regulatory Administration is not the primary financial regulatory agency shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Within 1 year of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly

adopt rules governing reporting and recordkeeping for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall, for such period as may be prescribed by the Commission by rule or regulation, maintain daily trading records of that dealer's or participant's—

"(A) swaps and all related records (including related cash or forward transactions); and

"(B) recorded communications, including the electronic mail, instant messages, and recordings of telephone calls.

"(2) INFORMATION REQUIREMENTS.—The daily trading records required to be maintained under paragraph (1) shall include such information as the Commission shall prescribe by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered swap dealer and major swap participant shall maintain daily trading records for each customer or counterparty in such manner and form as to be identifiable with each swap transaction.

"(4) AUDIT TRAIL.—

"(A) MAINTENANCE OF AUDIT TRAIL.—Each registered swap dealer and major swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(B) PERMISSIBLE COMPLIANCE BY ENTITY OTHER THAN DEALER OR PARTICIPANT.—A registered swap repository may, at the request of a registered swap dealer or major swap participant, satisfy the requirement of subparagraph (A) on behalf of such registered swap dealer or major swap participant.

"(5) RULES.—Within 1 year of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with such business conduct standards as may be pre-

scribed by the Commission by rule or regulation, including any standards addressing—

"(A) fraud, manipulation, and other abusive practices involving swaps (including swaps that are offered but not entered into);

"(B) diligent supervision of its business as a swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission pursuant to paragraph (1) shall—

"(A) establish the standard of care for a swap dealer or major swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the swap dealer or major swap participant to any counterparty to the transaction (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the swap;

"(ii) the source and amount of any fees or other material remuneration that the swap dealer or major swap participant would directly or indirectly expect to receive in connection with the swap; and

"(iii) any other material incentives or conflicts of interest that the swap dealer or major swap participant may have in connection with the swap;

"(C) establish a standard of conduct for a swap dealer or major swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

"(D) establish a standard of conduct for a swap dealer or major swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) of section 1a(13) of this Act, to have a reasonable basis to believe that the counterparty has an independent representative that—

"(i) has sufficient knowledge to evaluate the transaction and risks;

"(ii) is not subject to a statutory disqualification;

"(iii) is independent of the swap dealer or major swap participant;

"(iv) undertakes a duty to act in the best interests of the counterparty it represents;

"(v) makes appropriate disclosures; and

"(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and

"(E) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(3) RULES.—Not later than 1 year after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap deal-

ers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

"(1) IN GENERAL.—Each registered swap dealer and major swap participant shall conform with standards, as may be prescribed by the Commission by rule or regulation, addressing timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

"(2) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission, in consultation with the appropriate Federal banking agencies, shall adopt rules governing documentation and back office standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(j) DEALER RESPONSIBILITIES.—Each registered swap dealer and major swap participant shall, at all times, comply with the following requirements:

"(1) MONITORING OF TRADING.—The swap dealer or major swap participant shall monitor its

trading in swaps to prevent violations of applicable position limits.

"(2) DISCLOSURE OF GENERAL INFORMATION.—The swap dealer or major swap participant shall disclose to the Commission and to the Financial Institutions Regulatory Administration information concerning—

"(A) terms and conditions of its swaps;

"(B) swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to swaps; and

"(D) other information relevant to its trading in swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The swap dealer or major swap participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the Financial Institutions Regulatory Administration upon request.

"(4) CONFLICTS OF INTEREST.—The swap dealer and major swap participant shall implement conflict of interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a swap dealer or major swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission, the Securities and Exchange Commission, and the Financial Institutions Regulatory Administration shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.".

SEC. 718. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 717) the following:

"SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.

"(a) CLEARED SWAPS.—A swap dealer, futures commission merchant, or derivatives clearing organization by or through which funds or other property are held to margin, guarantee, or secure the obligations of a counterparty under a swap to be cleared by or through a derivatives clearing organization shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank swap dealers, futures commission merchants, or derivatives clearing organizations, or the Financial Institutions Regulatory Administration shall prescribe for bank swap deal-

1 ers. Any such funds or other property shall be treated as
2 customer property under this Act.
3 ''(b) OTHER SWAPS.—At the request of a swap
4 counterparty who provides funds or other property to a
5 swap dealer to margin, guarantee, or secure the obliga-
6 tions of the counterparty under a swap between the
7 counterparty and the swap dealer that is not submitted
8 for clearing to a derivatives clearing organization, the
9 swap dealer shall segregate the funds or other property
10 for the benefit of the counterparty, and maintain the funds
11 or other property in an account which is carried by an
12 independent third-party custodian and designated as a
13 segregated account for the counterparty, in accordance
14 with such rules and regulations as the Commission shall
15 prescribe for nonbank swap dealers, futures commission
16 merchants, or derivatives clearing organizations, or the Fi-
17 nancial Institutions Regulatory Administration shall pre-
18 scribe for bank swap dealers. This subsection shall not be
19 interpreted to preclude commercial arrangements regard-
20 ing the investment of the segregated funds or other prop-
21 erty and the related allocation of gains and losses resulting
22 from any such investment, provided, however, that the
23 segregated funds or other property under this subsection
24 may be invested only in such investments as the Commis-

sion or the Financial Institutions Regulatory Administration, as applicable, permits by rule or regulation.''.

SEC. 719. CONFLICTS OF INTEREST.

Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by—

(1) redesignating subsection (c) as subsection (d); and

(2) inserting after subsection (b) the following:

''(c) CONFLICTS OF INTEREST.—The Commission shall require that futures commission merchants and introducing brokers implement conflict of interest systems and procedures that—

''(1) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any commodity are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

''(2) address such other issues as the Commission determines appropriate.''.

SEC. 720. ALTERNATIVE SWAP EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5g the following:

"SEC. 5h. ALTERNATIVE SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—No person may operate a facility for the trading of swaps unless the facility is registered as an alternative swap execution facility under this section or as a designated contract market registered under this Act.

''(2) DUAL REGISTRATION.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Securities and Exchange Commission as an alternative swap execution facility.

''(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is registered under subsection (a) may trade any swap.

''(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the contract market and the alternative swap execution facility, identify whether the

electronic trading is taking place on the contract market or the alternative swap execution facility.

"(d) CRITERIA FOR REGISTRATION.—

"(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be required to demonstrate to the Commission that such facility meets the criteria established under this section.

"(2) DETERRENCE OF ABUSES.—Each alternative swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including—

"(A) means to obtain information necessary to perform the functions required under this section; or

"(B) means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether any violations of this section have occurred.

"(3) TRADING PROCEDURES.—Each alternative swap execution facility shall establish and enforce rules or terms and conditions defining, or specifica-

tions detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

"(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—Each alternative swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through its facilities, including the clearance and settlement of the swaps pursuant to section 2(j)(1).

"(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE.—

"(A) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles established in this subsection and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

"(B) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this subsection.

"(2) COMPLIANCE WITH RULES.—Each alternative swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the swaps traded on or through the facility and any limitations on access to the facility.

"(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—Each alternative swap execution facility shall permit trading only in swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—Each alternative swap execution facility shall monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—Each alternative swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, and to eliminate or prevent excessive speculation as described in section 4a(a), an alternative swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability for speculators.

"(B) FOR CERTAIN CONTRACTS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), an alternative swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

"(7) EMERGENCY AUTHORITY.—Each alternative swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission,

where necessary and appropriate, including the authority—

"(A) to liquidate or transfer open positions in any swap; or

"(B) to suspend or curtail trading in a swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—Each alternative swap execution facility shall make public timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—Each alternative swap execution facility shall—

"(i) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years;

"(ii) report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission; and

"(iii) make available to the Securities and Exchange Commission, upon request, all information, including a complete audit trail, relating to transactions in security-based swap agreements (as such term is defined in section 3(a)(76) of the Securities Exchange Act of 1934).

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and swap repositories.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, an alternative swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(11) CONFLICTS OF INTEREST.—Each alternative swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

"(B) establish a process for resolving any conflicts of interest.

"(12) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each alternative swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer shall perform the following duties:

"(i) Report directly to the board or to the senior officer of the facility.

"(ii) Review the compliance of the facility with the core principles established in this subsection.

"(iii) Consult with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, to resolve any conflicts of interest that may arise.

"(iv) Administering the policies and procedures of the facility required to be established pursuant to this section.

"(v) Ensuring compliance with commodity laws and the rules and regulations issued thereunder, including any rules prescribed by the Commission pursuant to this section.

"(vi) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this paragraph include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS REQUIRED.—

"(i) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the alternative swap execution facility with the commodity laws and the policies and procedures of the facility, including the code of ethics and

conflict of interest policies of the facility, in accordance with rules prescribed by the Commission.

"(ii) SUBMISSION.—The compliance report required under clause (i) shall accompany the financial reports of the alternative swap execution facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, the Financial Institutions Regulatory Administration, or the appropriate governmental authorities in the organization's home country.

"(g) HARMONIZATION OF RULES.—Within 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly prescribe rules governing the regulation of alternative swap

execution facilities under this section and section 3C of the Securities Exchange Act of 1934.''.

SEC. 721. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a and 7a-3) are repealed.

SEC. 722. DESIGNATED CONTRACT MARKETS.

(a) EXECUTION OF TRANSACTIONS.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by amending paragraph (9) to read as follows:

''(9) EXECUTION OF TRANSACTIONS.—

''(A) OPEN MARKET.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the board of trade's centralized market.

''(B) PERMISSIBLE TRANSACTIONS.—The rules may authorize, for bona fide business purposes—

''(i) transfer trades or office trades;

''(ii) an exchange of—

''(I) futures in connection with a cash commodity transaction;

"(II) futures for cash commodities; or

"(III) futures for swaps; or

"(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.".

(b) ADDITIONAL PRINCIPLES.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) is amended by adding at the end the following:

"(19) FINANCIAL RESOURCES.—The board of trade shall have adequate financial, operational, and managerial resources to discharge the responsibilities of a contract market. For the board of trade's financial resources to be considered adequate, their value shall exceed the total amount that would enable the contract market to cover its operating costs for a period of 1 year, calculated on a rolling basis.

"(20) SYSTEM SAFEGUARDS.—The board of trade shall—

"(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and give adequate scalable capacity;

"(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the board of trade's responsibilities and obligations; and

"(C) periodically conduct tests to verify that back-up resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.".

SEC. 723. MARGIN.

Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended in paragraph (7)(C), by striking ", excepting the setting of levels of margin".

SEC. 724. POSITION LIMITS.

(a) EXCESSIVE SPECULATION.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) in the first sentence, by striking ''on electronic trading facilities with respect to a significant price discovery contract'' and inserting ''swaps that perform or affect a significant price discovery function with respect to regulated markets'';

(3) in the second sentence, by—

(A) inserting '', including any group or class of traders,'' after ''held by any person''; and

(B) striking ''on an electronic trading facility with respect to a significant price discovery contract,'' and inserting ''swaps that perform or affect a significant price discovery function with respect to regulated markets,''; and

(4) inserting at the end the following:

''(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based upon the same underlying commodity (as defined by the Commission) that may be held by

any person, including any group or class of traders, for each month across—

"(A) contracts listed by designated contract markets;

"(B) contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to its electronic trading and order matching system; and

"(C) swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

"(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination under paragraph (2) whether a swap performs or affects a significant price discovery function with respect to regulated markets, the Commission shall consider, as appropriate the following:

"(A) PRICE LINKAGE.—The extent to which the swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a regulated market based upon the same underlying commodity, to value a position, transfer or

convert a position, financially settle a position, or close out a position.

"(B) ARBITRAGE.—The extent to which the price for the swap is sufficiently related to the price of another contract traded on a regulated market based upon the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the swaps on a frequent and recurring basis.

"(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a regulated market are directly based on, or are determined by referencing, the price generated by the swap.

"(D) MATERIAL LIQUIDITY.—The extent to which the volume of swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a regulated market.

"(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to deter-

mine whether a swap serves a significant price discovery function with respect to a regulated market.

''(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, or any transaction or class of transactions from any requirement the Commission may establish under this section with respect to position limits.''.

(b) TRACKING POSITION LIMITS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or alternative swap execution facility or facilities''; and

(2) in paragraph (2), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or alternative swap execution facility''.

SEC. 725. ENHANCED AUTHORITY OVER REGISTERED ENTITIES.

(a) Section 5(d)(1) of the Commodity Exchange Act (7 U.S.C. 7(d)(1)) is amended by striking ''The board of

trade shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the board of trade shall have''.

(b) Section 5b(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)(A)) is amended by striking ''The applicant shall have'' and inserting ''Except where the Commission otherwise determines by rule or regulation pursuant to section 8a(5), the applicant shall have''.

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

(1) in paragraph (1), by striking ''5a(d) and 5b(c)(2)'' and inserting ''5b(c)(2) and 5h(e)''; and

(2) in paragraph (2), by striking ''shall not'' and inserting ''may''.

(d) Section 5c(c)(1) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(1)) is amended—

(1) by striking ''(1) IN GENERAL.—Subject to'' and inserting the following:

''(1) IN GENERAL.—

''(A) Subject to''; and

(2) by adding at the end the following:

''(B) Unless section 805(e) of the Payment, Clearing, and Settlement Supervision Act of 2009 applies, the new contract or instrument or clearing of the new contract or instrument,

new rule, or rule amendment shall become effective, pursuant to the registered entity's certification, 10 business days after the Commission's receipt of the certification (or such shorter period as may be determined by the Commission by rule or regulation) unless the Commission notifies the registered entity within such time that the Commission is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with this Act (including regulations under this Act).

"(C) A notification by the Commission pursuant to subparagraph (B) shall stay the certification of the new contract or instrument or clearing of the new contract or instrument, new rule or new amendment for up to an additional 90 days from the date of such notification.".

(e) Section 5c(d) of the Commodity Exchange Act (7 U.S.C. 7a–2(d)) is repealed.

SEC. 726. FOREIGN BOARDS OF TRADE.

(a) TECHNICAL AMENDMENT.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended in the third sentence by striking ''No rule or regulation'' and inserting ''Except as provided in paragraphs (1) and (2), no rule or regulation''.

(b) REGISTRATION.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is further amended by inserting before ''The Commission'' the following:

''(1) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

''(2) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the mem-

bers of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

"(A) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(B) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

"(i) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provi-

sions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

"(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

"(iii) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

"(I) the information that the foreign board of trade will make publicly available;

"(II) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

"(III) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

"(IV) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

"(iv) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

"(v) provides the Commission with information necessary to publish reports on aggregate trader positions for the agree-

ment, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

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

"(4) PERSONS LOCATED IN THE UNITED STATES.—".

(c) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—

(1) Section 4(a) of the Commodity Exchange Act (7 U.S.C. 6(a)) is amended by inserting "or by subsection (f)" after "Unless exempted by the Commission pursuant to subsection (c)".

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

"(f) ADDITIONAL EXEMPTION.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).".

(d) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

"(5) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.".

SEC. 727. LEGAL CERTAINTY FOR SWAPS.

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

"(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

"(A) HYBRIDS.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to such hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, such a hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

"(B) AGREEMENTS BETWEEN CONTRACT PARTICIPANTS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or

transaction to meet the definition of a swap set forth in section 1a or to be cleared pursuant to section 2(j)(1).''.

SEC. 728. FDICIA AMENDMENTS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421-4422) are hereby repealed.

SEC. 729. PRIMARY ENFORCEMENT AUTHORITY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding the following new section after section 4b:

''SEC. 4b–1. PRIMARY ENFORCEMENT AUTHORITY.

''(a) COMMODITIES FUTURES TRADING COMMISSION.—Except as provided in subsections (b), (c), and (d), the Commission shall have primary authority to enforce the provisions of subtitle A of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

''(b) FIRA.—The Financial Institutions Regulatory Administration shall have exclusive authority to enforce the provisions of section 4s(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are swap dealers or major swap participants.

''(c) REFERRAL.—If the Financial Institutions Regulatory Administration has cause to believe that a swap

dealer or major swap participant for which FIRA is the primary financial regulatory agency may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 4s or rules adopted by the Commission thereunder, the Financial Institutions Regulatory Administration may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

''(d) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a recommendation under subsection (c), the Financial Institutions Regulatory Administration may initiate an enforcement proceeding as permitted under Federal law.''.

SEC. 730. ENFORCEMENT.

(a) Section 4b(a)(2) of the Commodity Exchange Act (7 U.S.C. 6b(a)(2)) is amended by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(b) Section 4b(b) of the Commodity Exchange Act (7 U.S.C. 6b(b)) is amended by striking ''or other agree-

ment, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or swap,''.

(c) Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by inserting ''or swap'' before ''if the transaction is used or may be used''.

(d) Section 9(a)(2) of the Commodity Exchange Act (7 U.S.C. 13(a)(2)) is amended by inserting ''or of any swap,'' before ''or to corner''.

(e) Section 9(a)(4) of the Commodity Exchange Act (7 U.S.C. 13(a)(4)) is amended by inserting ''swap repository,'' before ''or futures association''.

(f) Section 9(e)(1) of the Commodity Exchange Act (7 U.S.C. 13(e)(1)) is amended—

(1) by inserting ''swap repository,'' before ''or registered futures association''; and

(2) by inserting '', or swaps,'' before ''on the basis''.

(g) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended—

(1) by redesignating paragraphs (6), (7), (8), (9), and (10) as paragraphs (7), (8), (9), (10), and (11), respectively; and

(2) by inserting after paragraph (5), the following:

"(6) This section shall apply to any swap dealer, major swap participant, security-based swap dealer, major security-based swap participant, derivatives clearing organization, swap repository, or alternative swap execution facility, whether or not it is an insured depository institution, for which the Financial Institutions Regulatory Administration is the primary financial regulatory agency for purposes of the Over-the-Counter Derivatives Markets Act of 2009.".

SEC. 731. RETAIL COMMODITY TRANSACTIONS.

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

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

(2) in paragraph (2), by adding at the end the following:

"(D) RETAIL COMMODITY TRANSACTIONS.—

"(i) This subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

"(I) entered into with, or offered to (even if not entered into with), a

person that is not an eligible contract participant or eligible commercial entity; and

"(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

"(ii) Clause (i) shall not apply to—

"(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

"(II) any security;

"(III) a contract of sale that—

"(aa) results in actual delivery within 28 days or such other period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot mar-

kets for the commodity involved; or

"(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with their line of business;

"(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

"(V) an identified banking product, as defined in section 402(b) of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27(b)).

"(iii) Sections 4(a), 4(b), and 4b shall apply to any agreement, contract or transaction described in clause (i), that is not excluded from clause (i) by clause (ii), as if the agreement, contract, or transaction were a contract of sale of a commodity for future delivery.

"(iv) This subparagraph shall not be construed to limit any jurisdiction that the Commission may otherwise have under any other provision of this Act over an agreement, contract, or transaction that is a contract of sale of a commodity for future delivery.

"(v) This subparagraph shall not be construed to limit any jurisdiction that the Commission or the Securities and Exchange Commission may otherwise have under any other provisions of this Act with respect to security futures products and persons effecting transactions in security futures products.

"(vi) For the purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with its line of business.".

SEC. 732. LARGE SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4t (as added by section 718) the following:

"SEC. 4u. LARGE SWAP TRADER REPORTING.

''(a) PROHIBITION.—It shall be unlawful for any person to enter into any swap if—

''(1) such person shall directly or indirectly enter into such swaps during any 1 day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission; and

''(2) such person shall directly or indirectly have or obtain a position in such swaps equal to or in excess of such amount as shall be fixed from time to time by the Commission, unless—

''(A) such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in paragraph (1) and this paragraph as the Commission may by rule or regulation require; and

''(B) in accordance with the rules and regulations of the Commission, such person shall keep books and records of—

''(i) all such swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade; and

"(ii) cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

"(b) RECORDKEEPING.—Any books and records required to be kept under subsection (a) shall—

"(1) show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe;

"(2) be open at all times to inspection and examination by any representative of the Commission; and

"(3) be open at all times to inspection and examination by the Securities and Exchange Commission, to the extent such books and records relate to transactions in security-based swap agreements (as that term is defined in section 3(a)(76) of the Securities Exchange Act of 1934).

"(c) RULE OF CONSTRUCTION.—For the purpose of this section, the swaps, futures, and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

"(d) CONSIDERATIONS.—In making a determination under this section whether a swap performs or affects a significant price discovery function with respect to regu-

lated markets, the Commission shall consider the factors set forth in section 4a(a)(3).''.

SEC. 733. OTHER AUTHORITY.

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

SEC. 734. ANTITRUST.

Nothing in the amendments made by this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subtitle, the term ''antitrust laws'' has the same meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

Subtitle B—Regulation of Security-Based Swap Markets

SEC. 751. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in subparagraphs (A) and (B) of paragraph (5), by inserting ''(but not security-based swaps,

other than security-based swaps with or for persons that are not eligible contract participants)'' after ''securities'' each place that term appears;

(2) in paragraph (10), by inserting ''security-based swap,'' after ''security future,'';

(3) in paragraph (13), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(4) in paragraph (14), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(5) in paragraph (39)—

(A) by striking ''or government securities dealer'' and inserting ''government securities dealer, security-based swap dealer, or major security-based swap participant'' each place that term appears; and

(B) in subparagraph (B)(i)(II), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(6) by adding at the end the following:

''(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).

''(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

''(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major security-based swap participant' means any person—

''(i) who is not a security-based swap dealer; and

''(ii) whose outstanding security-based swaps create net counterparty credit exposures (current or potential future exposures) to other market participants that would expose those other market partici-

pants to significant credit losses in the event of the person's default.

"(68) SECURITY-BASED SWAP.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35))(without regard to paragraph (35)(B)(xii) of such section), and that is based on—

"(i) an index that is a narrow-based security index, including any interest therein or based on the value thereof;

"(ii) a single security or loan, including any interest therein or based on the value thereof; or

"(iii) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

"(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because such agreement, contract, or transaction references or is based upon a government security.

"(C) MIXED SWAP.—

"(i) IN GENERAL.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on—

"(I) the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than securities or any other financial or economic interest or property described in subparagraph (A) or a narrow-based security index); or

"(II) the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated

with a potential financial, economic, or commercial consequence (other than an event or contingency described in subparagraph (A)(iii)).

"(ii) RULE OF CONSTRUCTION.—A security-based swap shall not constitute, nor shall be construed to constitute, a mixed swap solely because the obligations or rights of 1 party to the swap agreement are defined by reference to 1 or more interest rates or currencies.

"(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under

the master agreement that is a security-based swap pursuant to subparagraph (A).

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

''(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'person associated with a security-based swap dealer or major security-based swap participant' or 'associated person of a security-based swap dealer or major security-based swap participant' means—

''(A) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

''(B) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

''(C) any employee of such security-based swap dealer or major security-based swap participant, except that any person associated with a security-based swap dealer or major security-

based swap participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term other than for purposes of section 15F(e)(2).

''(71) SECURITY-BASED SWAP DEALER.—

''(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-based swaps for such person's own account, through a broker or otherwise.

''(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

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

''(74) FIRA.—The term 'FIRA' means the Financial Institutions Regulatory Administration.

"(75) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

"(76) SECURITY-BASED SWAP AGREEMENT.—

"(A) IN GENERAL.—For purposes of sections 9, 10, 10B, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933, the term 'security-based swap agreement' means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

"(B) EXCLUSIONS.—The term 'security-based swap agreement' does not include any security-based swap.".

SEC. 752. REPEAL OF PROHIBITION ON REGULATION OF SECURITY-BASED SWAPS.

(a) REPEAL.—Sections 206B and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) are hereby repealed.

(b) CONFORMING AMENDMENTS TO GRAMM-LEACH-BLILEY.—Section 206A(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) is amended in the material pre-

ceding paragraph (1), by striking ''Except as'' and all that follows through ''that—'' and inserting the following: ''Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction that—''

(c) CONFORMING AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) Section 2A(b) of the Securities Act of 1933 (15 U.S.C. 77b–1) is amended—

(A) by striking subsection (a) and reserving the subsection; and

(B) in subsection (b)—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears; and

(ii) by striking paragraph (1); and

(iii) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) Section 17 of the Securities Act of 1933 (15 U.S.C. 77q) is amended—

(A) in subsection (a), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''; and

(B) in subsection (d), by striking ''206B of the Gramm-Leach-Bliley Act'' and inserting ''3(a)(76) of the Securities Exchange Act of 1934''.

(d) CONFORMING AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 3A (15 U.S.C. 78c–1)—

(A) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(B) by striking subsection (a) and reserving the subsection; and

(C) in subsection (b)—

(i) by striking paragraph (1);

(ii) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(iii) in paragraph (2) (as so redesignated), by inserting ''or section 9(j) with respect to rulemaking authority to prevent fraudulent, deceptive, or manipulative practices'' after ''reporting requirements'';

(2) in section 9(a) (15 U.S.C. 78i(a)), by striking paragraphs (2) through (5) and inserting the following:

''(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

''(3) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or security-based swap or security based-swap agreement with respect to such security to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any

1 or more persons conducted for the purpose of raising or depressing the price of such security.

"(4) If a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap or security-based swap agreement with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap or security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he or she knew or had reasonable ground to believe was so false or misleading.

"(5) For a consideration, received directly or indirectly from a dealer, broker, security-based swap dealer, major security-based swap participant, or other person selling or offering for sale or purchasing or offering to purchase the security or security-based swap agreement with respect to such se-

curity, to induce the purchase of any security registered on a national securities exchange or any security-based swap or security-based swap agreement with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.''; (3) in section 9(i) (15 U.S.C. 78i(i)), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; (4) in section 10 (15 U.S.C. 78j), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears; (5) in section 15(c)(1) (15 U.S.C. 78o(c)(1))—

(A) in subparagraph (A), by striking '', or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),''; and

(B) in subparagraphs (B) and (C), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(6) in section 15(i) (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455)), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(7) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking ''(as defined in section 206(b) of the Gramm-Leach-Bliley Act)'' and inserting ''or a security-based swap'';

(B) in subsection (a)(3)(B), by inserting ''or security-based swaps'' after ''security-based swap agreements'';

(C) in subsection (b)—

(i) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears; and

(ii) inserting ''or a security-based swap'' after ''security-based swap agreement'' each place that term appears; and

(D) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

(8) in section 20 (15 U.S.C. 78t)—

(A) in subsection (d), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (f), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(9) in section 21A (15 U.S.C. 78u–1)—

(A) in subsection (a)(1), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) in subsection (g), by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 753. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) CLEARING FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding the following section after section 3A:

''SEC. 3B. CLEARING FOR SECURITY-BASED SWAPS.

''(a) CLEARING REQUIREMENT.—

''(1) SUBMISSION.—

''(A) IN GENERAL.—Except as provided in paragraph (8), any person who is a party to a security-based swap shall submit such security-

based swap for clearing to a clearing agency registered under section 17A of this Act.

"(B) REQUIRED CONDITIONS.—The rules of a clearing agency described in subparagraph (A) shall—

"(i) prescribe that all security-based swaps with the same terms and conditions are fungible and may be offset with each other; and

"(ii) provide for nondiscriminatory clearing of a security-based swap executed on or through the rules of an unaffiliated national securities exchange or an alternative swap execution facility.

"(2) COMMISSION APPROVAL.—

"(A) IN GENERAL.—A clearing agency shall submit to the Commission for prior approval any group, category, type, or class of security-based swaps, that the clearing agency seeks to accept for clearing, which submission the Commission shall make available to the public.

"(B) DEADLINE.—The Commission shall take final action on a request submitted pursuant to subparagraph (A) not later than 90 days

after submission of the request, unless the clearing agency submitting the request agrees to an extension of the time limitation established under this subparagraph.

"(C) APPROVAL.—The Commission shall approve, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, any request submitted pursuant to subparagraph (A) if the Commission finds that the request is consistent with the requirements of section 17A. The Commission shall approve any such request if the Commission does not make such finding.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for a clearing agency's submission for approval, pursuant to this paragraph, of a security-based swap, or a group, category, type or class of security-based swaps, that the clearing agency seeks to accept for clearing.

"(3) STAY OF CLEARING REQUIREMENT.—At any time after issuance of an approval pursuant to paragraph (2):

"(A) REVIEW PROCESS.—The Commission, on application of a counterparty to a security-based swap or on its own initiative, may stay the clearing requirement of paragraph (1) until the Commission completes a review of the terms of the security-based swap (or the group, category, type, or class of security-based swaps) and the clearing arrangement.

"(B) DEADLINE.—The Commission shall complete a review undertaken pursuant to subparagraph (A) not later than 90 days after issuance of the stay, unless the clearing agency that clears the security-based swap, or group, category, type or class of security-based swaps, agrees to an extension of the time limitation established under this subparagraph.

"(C) DETERMINATION.—Upon completion of the review undertaken pursuant to subparagraph (A)—

"(i) the Commission may determine, unconditionally or subject to such terms and conditions as the Commission determines to be appropriate, that the security-based swap, or group, category, type, or class of security-based swaps, must be

cleared pursuant to this subsection if the Commission finds that such clearing—

"(I) is consistent with the requirements of section 17A; and

"(II) is otherwise in the public interest, for the protection of investors, and consistent with the purposes of this title;

"(ii) the Commission may determine that the clearing requirement of paragraph (1) shall not apply to the security-based swap, or group, category, type, or class of security-based swaps; or

"(iii) if a determination is made that the clearing requirement of paragraph (1) shall no longer apply, then it shall still be permissible to clear such security-based swap, or group, category, type, or class of security-based swaps.

"(D) RULES.—Not later than 180 days after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission shall adopt rules for reviewing, pursuant to this paragraph, a clearing agency's clearing of a security-based swap, or a group,

category, type, or class of security-based swaps, the Commission has accepted for clearing.

"(4) SECURITY-BASED SWAPS REQUIRED TO BE ACCEPTED FOR CLEARING.—

"(A) RULEMAKING.—Within 180 days of the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt rules to further identify security-based swaps, or any group, category, type, or class of security-based swaps, that although not submitted for approval under paragraph (2) but the Commission and Commodities Futures Trading Commission deem should be accepted for clearing. In adopting such rules, the Commission and the Commodity Futures Trading Commission shall take into account the following factors:

"(i) The extent to which any of the terms of the security-based swap, including price, are disseminated to third parties or are referenced in other agreements, contracts, or transactions.

"(ii) The volume of transactions in the security-based swap.

"(iii) The extent to which the terms of the security-based swap are similar to the terms of other agreements, contracts, or transactions that are centrally cleared.

"(iv) Whether any differences in the terms of the security-based swap, compared to other agreements, contracts, or transactions that are centrally cleared, are of economic significance.

"(v) Whether a clearing agency is prepared to clear the security-based swap and such clearing agency has in place effective risk management systems.

"(vi) Any other factors the Commission and the Securities and Exchange Commission determine to be appropriate.

"(B) OTHER DESIGNATIONS.—The Commission may separately designate a particular security-based swap or class of security-based swaps as subject to the clearing requirement in paragraph (1), taking into account the factors established in clauses (i) through (vi) of subparagraph (A) and the joint rules adopted in such subparagraph.

"(5) PREVENTION OF EVASION.—The Commission shall have authority to prescribe rules under this section, or issue interpretations of such rules, as necessary to prevent evasions of this section.

"(6) REQUIRED REPORTING.—

"(A) BOTH COUNTERPARTIES.—Both counterparties to a security-based swap that is not accepted for clearing by any clearing agency shall report such a security-based swap either to a registered security-based swap repository described in section 13(n) or, if there is no repository that would accept the security-based swap, to the Commission pursuant to section 13A.

"(B) TIMING.—Counterparties to a security-based swap shall submit the reports required under subparagraph (A) within such time period as the Commission may by rule or regulation prescribe.

"(7) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

"(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of

2009 shall be reported to a registered security-based swap repository or the Commission not later than the later of—

"(i) 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

"(ii) such other time after entering into the security-based swap as the Commission may prescribe by rule or regulation.

"(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission not later than the later of—

"(i) 90 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009; or

"(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

"(8) TRADE EXECUTION.—

"(A) IN GENERAL.—With respect to transactions involving security-based swaps subject

to the clearing requirement of paragraph (1), counterparties shall—

"(i) execute the transaction on an exchange; or

"(ii) execute the transaction on an alternative swap execution facility registered under section 3C.

"(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no exchange or alternative swap execution facility makes the swap available to trade.

"(9) EXEMPTIONS.—

"(A) IN GENERAL.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a security-based swap from the requirements of paragraphs (1) and (8), and any rules issued under this subsection, if—

"(i) no clearing agency registered under this Act will accept the security-based swap for clearing; or

"(ii) 1 of the counterparties to the security-based swap—

"(I) is not a security-based swap dealer or major security-based swap participant; and

"(II) does not meet the eligibility requirements of any clearing agency that clears the security-based swap.

"(B) PRIOR CONSULTATION WITH THE COMMODITY FUTURES TRADING COMMISSION AND AGENCY FOR FINANCIAL STABILITY.—

"(i) CONSULTATION.—Before acting by rule or order to exempt a security-based swap, or any group, category, type, or class of security-based swaps from any requirement or rule under this subsection, the Commission shall consult with, and consider the views of, the Commodity Futures Trading Commission and the Agency for Financial Stability concerning whether such exemption is necessary and appropriate for the reduction of systemic risk and in the public interest.

"(ii) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this paragraph, the Commission shall send a notice to the Com-

modity Futures Trading Commission and the Agency for Financial Stability describing such exemption. If either the Commodity Futures Trading Commission or the Agency for Financial Stability issues a finding under clause (i) that such an exemption does not meet the standard described in clause (i), the Commission may not issue such exemption.

"(iii) DEADLINE.—Any finding by the Commodity Futures Trading Commission or the Agency for Financial Stability shall be made and provided in writing to the Commission not later than 45 days after the date of receipt of notice of a proposed exemption by the Commission.

"(iv) NONDELEGATION.—Action by the Commodity Futures Trading Commission or the Agency for Financial Stability under this subparagraph may not be delegated.

"(C) REQUESTED CLEARANCE.—If any party to a security-based swap that is exempt from the clearing requirements of paragraph (1) requests that such security-based swap be

cleared by a clearing agency, and a clearing agency registered under this Act will accept such security-based swap for clearing, then—

"(i) the exemption shall not apply; and

"(ii) the swap shall be cleared by such agency.

"(10) RELATIONSHIP TO DERIVATIVES CLEARING ORGANIZATIONS.—A clearing agency may clear swaps that are required to be cleared by a person who is registered as a derivatives clearing organization under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(11) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a clearing agency under this title shall register with the Commission regardless of whether the person is also a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(b) REPORTING.—

"(1) TRANSPARENCY.—

"(A) IN GENERAL.—A clearing agency that clears security-based swaps shall provide to the

Commission and any security-based swap repository designated by the Commission all information determined by the Commission to be necessary to perform its responsibilities under this Act.

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for security-based swaps cleared by clearing agencies that are comparable to the corresponding requirements for security-based swaps accepted by security-based swap repositories and security-based swaps traded on alternative swap execution facilities.

"(C) SHARING OF INFORMATION.—The Commission shall share such information, upon request, with the Board, the Commodity Futures Trading Commission, the appropriate Federal banking agencies, the Agency for Financial Stability, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(2) PUBLIC INFORMATION.—A clearing agency that clears security-based swaps shall provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13.

"(c) DESIGNATION OF COMPLIANCE OFFICER.—

"(1) IN GENERAL.—Each clearing agency that clears security-based swaps shall designate an individual to serve as a compliance officer.

"(2) DUTIES.—The compliance officer shall perform the following duties:

"(A) Report directly to the board or to the senior officer of the clearing agency.

"(B) Consult with the board of the clearing agency, a body performing a function similar to that of a board, or the senior officer of the clearing agency, to resolve any conflicts of interest that may arise.

"(C) Administering the policies and procedures of the clearing agency required to be established pursuant to this section.

"(D) Ensuring compliance with securities laws and the rules and regulations issued there-

under, including rules prescribed by the Commission pursuant to this section.

"(E) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this subsection include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(3) ANNUAL REPORTS REQUIRED.—

"(A) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the clearing agency with the securities laws and the policies and procedures of the agency, including the code of ethics and conflict of interest policies of the agency, in accordance with rules prescribed by the Commission.

"(B) SUBMISSION.—The compliance report required under subparagraph (A) shall accompany the financial reports of the clearing agency that are required to be furnished to the Commission pursuant to this section and shall

include a certification that, under penalty of law, the report is accurate and complete.

"(d) CONSULTATION.—The Commission and the Commodity Futures Trading Commission shall consult with the appropriate Federal banking agencies and each other prior to adopting rules under this section.

"(e) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing—

"(1) the clearing and settlement of swaps, as well as persons that are registered as derivatives clearing organizations for swaps under the Commodity Exchange Act (7 U.S.C. 1 et seq.); and

"(2) the clearing and settlement of security-based swaps, as well as persons that are registered as clearing agencies for security-based swaps under this Act.".

(b) ALTERNATIVE SWAP EXECUTION FACILITIES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended by adding after section 3B the following:

"SEC. 3C. ALTERNATIVE SWAP EXECUTION FACILITIES.

"(a) REGISTRATION.—

"(1) IN GENERAL.—No person may operate a facility for the trading of security-based swaps unless the facility is registered as an alternative swap execution facility under this section or as a securities exchange registered under this Act.

"(2) DUAL REGISTRATION.—Any person that is required to be registered as an alternative swap execution facility under this section shall register with the Commission regardless of whether that person also is registered with the Commodity Futures Trading Commission as an alternative swap execution facility.

"(b) REQUIREMENTS FOR TRADING.—An alternative swap execution facility that is registered under subsection (a) may trade any security-based swap.

"(c) TRADING BY EXCHANGES.—An exchange shall, to the extent that the exchange also operates an alternative swap execution facility and uses the same electronic trade execution system for trading on the exchange and the alternative swap execution facility, identify whether the electronic trading is taking place on the exchange or the alternative swap execution facility.

"(d) CRITERIA FOR REGISTRATION.—

"(1) IN GENERAL.—To be registered as an alternative swap execution facility, the facility shall be

required to demonstrate to the Commission such facility meets the criteria established by this section.

"(2) DETERRENCE OF ABUSES.—Each alternative swap execution facility shall establish and enforce trading and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including—

"(A) means to obtain information necessary to perform the functions required under this section; or

"(B) means to—

"(i) provide market participants with impartial access to the market; and

"(ii) capture information that may be used in establishing whether any violations of this section have occurred.

"(3) TRADING PROCEDURES.—Each alternative swap execution facility shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on or through its facilities.

"(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—Each alternative swap execution facility shall establish and enforce rules and procedures for

ensuring the financial integrity of security-based swaps entered on or through its facilities, including the clearance and settlement of the security-based swaps.

"(e) CORE PRINCIPLES FOR ALTERNATIVE SWAP EXECUTION FACILITIES.—

"(1) COMPLIANCE.—

"(A) IN GENERAL.—To maintain its registration as an alternative swap execution facility, the facility shall comply with the core principles established in this subsection and any requirement that the Commission may impose by rule or regulation.

"(B) REASONABLE DISCRETION.—Except where the Commission determines otherwise by rule or regulation, the facility shall have reasonable discretion in establishing the manner in which it complies with the core principles established in this subsection.

"(2) COMPLIANCE WITH RULES.—Each alternative swap execution facility shall monitor and enforce compliance with any of the rules of the facility, including the terms and conditions of the security-based swaps traded on or through the facility and any limitations on access to the facility.

"(3) SECURITY-BASED SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—Each alternative swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

"(4) MONITORING OF TRADING.—Each alternative swap execution facility shall monitor trading in security-based swaps to prevent manipulation and price distortion through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

"(5) ABILITY TO OBTAIN INFORMATION.—Each alternative swap execution facility shall—

"(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this subsection;

"(B) provide the information to the Commission upon request; and

"(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

"(6) POSITION LIMITS OR ACCOUNTABILITY.—

"(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, an alternative swap execution facility shall adopt for each of its contracts, where necessary and appropriate, position limitations or position accountability.

"(B) FOR CERTAIN CONTRACTS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 10B, an alternative swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

"(7) EMERGENCY AUTHORITY.—Each alternative swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to suspend or curtail trading in a security-based swap.

"(8) TIMELY PUBLICATION OF TRADING INFORMATION.—Each alternative swap execution facility shall make public timely information on price, trading volume, and other trading data to the extent prescribed by the Commission.

"(9) RECORDKEEPING AND REPORTING.—

"(A) IN GENERAL.—Each alternative swap execution facility shall—

"(i) maintain records of all activities related to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

"(ii) report to the Commission all information determined by the Commission to be necessary or appropriate for the Commission to perform its responsibilities under this Act in a form and manner acceptable to the Commission.

"(B) DATA COLLECTION REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for alternative swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap repositories.

"(10) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, an alternative swap execution facility shall avoid—

"(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading on the swap execution facility.

"(11) CONFLICTS OF INTEREST.—Each alternative swap execution facility shall—

"(A) establish and enforce rules to minimize conflicts of interest in its decisionmaking process; and

"(B) establish a process for resolving any conflicts of interest.

"(12) DESIGNATION OF COMPLIANCE OFFICER.—

"(A) IN GENERAL.—Each alternative swap execution facility shall designate an individual to serve as a compliance officer.

"(B) DUTIES.—The compliance officer shall perform the following duties:

"(i) Report directly to the board or to the senior officer of the facility.

"(ii) Review the compliance of the facility with the core principles established in this subsection.

"(iii) Consult with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, to resolve any conflicts of interest that may arise.

"(iv) Administering the policies and procedures of the facility required to be established pursuant to this section.

"(v) Ensuring compliance with securities laws and the rules and regulations issued thereunder, including any rules prescribed by the Commission pursuant to this section.

"(vi) Establishing procedures for remediation of noncompliance issues found during compliance office reviews, lookbacks, internal or external audit findings, self-reported errors, or through validated complaints. Procedures to be established under this paragraph include procedures related to the handling, management response, remediation, retesting, and closing of noncompliance issues.

"(C) ANNUAL REPORTS REQUIRED.—

"(i) IN GENERAL.—The compliance officer shall annually prepare and sign a report on the compliance of the alternative swap execution facility with the securities laws and the policies and procedures of the facility, including the code of ethics and conflict of interest policies of the facility, in accordance with rules prescribed by the Commission.

"(ii) SUBMISSION.—The compliance report required under clause (i) shall accompany the financial reports of the alternative swap execution facility that are required to be furnished to the Commission pursuant to this section and shall include a certification that, under penalty of law, the report is accurate and complete.

"(f) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, an alternative swap execution facility from registration under this section if the Commission finds that such organization is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Commodity Futures Trading Commission, the Financial Institutions Regulatory Ad-

1 ministration, or the appropriate governmental authorities
2 in the organization's home country.

3 ''(g) HARMONIZATION OF RULES.—Within 180 days
4 of the date of the enactment of the Over-the-Counter De-
5 rivatives Markets Act of 2009, the Commission and the
6 Commodity Futures Trading Commission shall jointly pre-
7 scribe rules governing the regulation of alternative swap
8 execution facilities under this section and section 5h of
9 the Commodity Exchange Act.''.

10 (c) TRADING IN SECURITY-BASED SWAP AGREE-
11 MENTS.—Section 6 of the Securities Exchange Act of
12 1934 (15 U.S.C. 78f) is amended by adding at the end
13 the following:

14 ''(l) PROHIBITION.—It shall be unlawful for any per-
15 son to effect a transaction in a security-based swap with
16 or for a person that is not an eligible contract participant
17 unless such transaction is effected on a national securities
18 exchange registered pursuant to subsection (b).''.

19 (d) REGISTRATION AND REGULATION OF SWAP
20 DEALERS AND MAJOR SWAP PARTICIPANTS.—The Secu-
21 rities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is
22 amended by inserting after section 15E (15 U.S.C. 78o–
23 7) the following:

"SEC. 15F. REGISTRATION AND REGULATION OF SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.

''(a) REGISTRATION.—It shall be unlawful for any person—

''(1) to act as a security-based swap dealer unless such person is registered as a security-based swap dealer with the Commission; and

''(2) to act as a major security-based swap participant unless such person is registered as a major security-based swap participant with the Commission.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a security-based swap dealer or major security-based swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—The application required under paragraph (1) shall be made in such form and manner as prescribed by the Commission, giving any information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged. Such person, when registered as a security-based swap dealer or major security-based swap participant, shall continue to report and furnish to the Commission such informa-

tion pertaining to such person's business as the Commission may require.

"(3) EXPIRATION.—Each registration shall expire at such time as the Commission may by rule or regulation prescribe.

"(4) RULES.—Except as provided in subsections (c), (d), and (e), the Commission may prescribe rules applicable to security-based swap dealers and major security-based swap participants, including rules that limit the activities of security-based swap dealers and major security-based swap participants. Except as provided in subsections (c) and (e), the Commission may provide conditional or unconditional exemptions from rules prescribed under this section for security-based swap dealers and major security-based swap participants that are subject to substantially similar requirements as brokers or dealers.

"(5) TRANSITION.—Rules adopted under this section shall provide for the registration of security-based swap dealers and major security-based swap participants not later than 1 year after the effective date of the Over-the-Counter Derivatives Markets Act of 2009.

"(c) DUAL REGISTRATION.—

"(1) SECURITY-BASED SWAP DEALERS.—Any person that is required to be registered as a security-based swap dealer under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a swap dealer.

"(2) MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Any person that is required to be registered as a major security-based swap participant under this section shall register with the Commission regardless of whether that person also is a bank or is registered with the Commodity Futures Trading Commission as a major swap participant.

"(d) JOINT RULES.—

"(1) IN GENERAL.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules for persons that are registered—

"(A) as security-based swap dealers or major security-based swap participants under this Act; and

"(B) as swap dealers or major swap participants under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

"(2) EXCEPTION FOR PRUDENTIAL REQUIREMENTS.—The Commission and the Commodity Futures Trading Commission shall not prescribe rules imposing prudential requirements (including activity restrictions) on security-based swap dealers or major security-based swap participants for which the Financial Institutions Regulatory Administration is the primary financial regulatory agency. This provision shall not be construed as limiting the authority of the Commission and the Commodity Futures Trading Commission to prescribe appropriate business conduct, reporting, and recordkeeping requirements to protect investors.

"(e) CAPITAL AND MARGIN REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which the Financial Institutions Regulatory Administration is the primary financial regulatory agency shall meet such minimum

capital requirements and minimum initial and variation margin requirements as FIRA shall by rule or regulation prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Each registered security-based swap dealer and major security-based swap participant for which the Financial Institutions Regulatory Administration is not the primary financial regulatory agency shall meet such minimum capital requirements and minimum initial and variation margin requirements as the Commission and the Commodity Futures Trading Commission shall by rule or regulation jointly prescribe to help ensure the safety and soundness of the security-based swap dealer or major security-based swap participant.

"(2) JOINT RULES.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the date of the enactment of the Over-the-Counter Derivatives

Markets Act of 2009, the Financial Institutions Regulatory Administration, in consultation with the Commission and the Commodity Futures Trading Commission, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which FIRA is the primary financial regulatory agency.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Within 180 days of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the Financial Institutions Regulatory Administration, shall jointly adopt rules imposing capital and margin requirements under this subsection for security-based swap dealers and major security-based swap participants for which FIRA is not the primary financial regulatory agency.

"(3) CAPITAL.—

"(A) BANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PAR-

TICIPANTS.—In setting capital requirements under this subsection for security-based swap dealers and major security-based swap participants for which FIRA is the primary financial regulatory agency, the Financial Institutions Regulatory Administration shall impose—

"(i) a capital requirement that is greater than zero for security-based swaps that are cleared by a clearing agency; and

"(ii) to offset the greater risk to the security-based swap dealer or major security-based swap participant and to the financial system arising from the use of security-based swaps that are not centrally cleared, substantially higher capital requirements for security-based swaps that are not cleared by a clearing agency than for security-based swaps that are centrally cleared.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—Capital requirements set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than the capital re-

quirements set by the Financial Institutions Regulatory Administration under this subsection.

"(C) BANK HOLDING COMPANIES.—Capital requirements set by the Financial Institutions Regulatory Administration for security-based swaps of bank holding companies on a consolidated basis shall be as strict as or stricter than the capital requirements for bank security-based swap dealers and major security-based swap participants set by the Financial Institutions Regulatory Administration under this subsection.

"(D) RULE OF CONSTRUCTION.—

"(i) IN GENERAL.—Nothing in this section shall limit, or be construed to limit, the authority—

"(I) the Commission to set financial responsibility rules for a broker or dealer registered pursuant to section 15(b) (except for section 15(b)(11) thereof) in accordance with section 15(c)(3); or

"(II) of the Commodity Futures Trading Commission to set financial

1 responsibility rules for a futures com-
2 mission merchant or introducing
3 broker registered pursuant to section
4 4f(a) of the Commodity Exchange Act
5 (except for section 4f(a)(3) thereof) in
6 accordance with section 4f(b) of the
7 Commodity Exchange Act.
8 ''(ii) FUTURES COMMISSION MER-
9 CHANTS AND OTHER DEALERS.—A futures
10 commission merchant, introducing broker,
11 broker, or dealer shall maintain sufficient
12 capital to comply with the stricter of any
13 applicable capital requirements to which
14 such merchant, introducing broker, broker,
15 or dealer is subject to under this title or
16 the Commodity Exchange Act.
17 ''(4) MARGIN.—
18 ''(A) BANK SWAP DEALERS AND MAJOR
19 SWAP PARTICIPANTS.—
20 ''(i) IN GENERAL.—The Financial In-
21 stitutions Regulatory Administration shall
22 impose both initial and variation margin
23 requirements under this subsection for se-
24 curity-based swap dealers and major secu-
25 rities based swap participants for which

FIRA is the primary financial regulatory agency on all security-based swaps that are not cleared by a clearing agency.

"(ii) EXEMPTION.—The Financial Institutions Regulatory Administration by rule or order, as FIRA deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a security-based swap dealer or major security-based swap participant for which FIRA is the primary financial regulatory agency from the requirements of this subsection and the rules issued under this subsection with regard to any security-based swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in na-

ture, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(iii) PRIOR CONSULTATION WITH AGENCY FOR FINANCIAL STABILITY, THE COMMISSION, AND THE COMMODITIES FUTURE TRADING COMMISSION.—

"(I) CONSULTATION.—Before acting by rule or order to exempt a security-based swap from any requirement or rule under this subsection, the Financial Institutions Regulatory Administration shall consult with, and consider the views of, the Agency for Financial Stability, the Commission, and the Commodity Futures Trading Commission concerning whether such exemption is necessary and appropriate for the reduction of systemic risk and in the public interest.

"(II) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under this subparagraph, the Financial Institutions Regulatory Administration

shall send a notice to the Agency for Financial Stability describing such exemption. If the Agency for Financial Stability issues a finding under subclause (I) that such an exemption does not meet the standard described in subclause (I), the Financial Institutions Regulatory Administration may not issue such exemption.

"(III) DEADLINE.—Any finding by the Agency for Financial Stability shall be made and provided in writing to the Financial Institutions Regulatory Administration not later than 45 days after the date of receipt of notice of a proposed exemption by FIRA.

"(IV) NONDELEGATION.—Action by the Agency for Financial Stability under this clause may not be delegated.

"(B) NONBANK SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.—

"(i) IN GENERAL.—Margin requirements for security-based swaps set by the Commission and the Commodity Futures Trading Commission under this subsection shall be as strict as or stricter than margin requirements for security-based swaps set by the Financial Institutions Regulatory Administration.

"(ii) EXEMPTION.—The Commission by rule or order, as the Commission deems necessary or appropriate in the public interest, may conditionally or unconditionally exempt a security-based swap from the requirements of this subparagraph and the rules issued under this subparagraph with regard to any security-based swap in which 1 of the counterparties is—

"(I) not a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant;

"(II) using the swap as part of an effective hedge under generally accepted accounting principles; and

"(III) predominantly engaged in activities that are not financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

"(iii) PRIOR CONSULTATION WITH THE COMMODITIES FUTURE TRADING COMMISSION AND AGENCY FOR FINANCIAL STABILITY.—

"(I) CONSULTATION.—Before acting by rule or order to exempt a swap, or any group, category, type, or class of swaps from any requirement or rule under this section, the Commission shall consult with, and consider the views of, the Commodity Futures Trading Commission and the Agency for Financial Stability concerning whether such exemption is necessary and appropriate for the reduction of systemic risk and in the public interest.

"(II) PROHIBITION ON ISSUANCE.—Not later than 45 days prior to issuing any exemption under

this paragraph, the Commission shall send a notice to the Commodity Futures Trading Commission and the Agency for Financial Stability describing such exemption. If either the Commodity Futures Trading Commission or the Agency for Financial Stability issues a finding under clause (i) that such an exemption does not meet the standard described in clause (i), the Commission may not issue such exemption.

"(III) DEADLINE.—Any finding by the Commodity Futures Trading Commission or the Agency for Financial Stability shall be made and provided in writing to the Commission not later than 45 days after the date of receipt of notice of a proposed exemption by the Commission.

"(IV) NONDELEGATION.—Action by the Commodity Futures Trading Commission or the Agency for Financial Stability under this subparagraph may not be delegated.

"(5) MARGIN REQUIREMENTS.—In prescribing margin requirements under this subsection, the Financial Institutions Regulatory Administration, the Commission, or the Commodity Futures Trading Commission may permit the use of noncash collateral, as FIRA, the Commission, or the Commodity Futures Trading Commission determines to be consistent with—

"(A) preserving the financial integrity of markets trading security-based swaps; and

"(B) preventing systemic risk.

"(6) REQUESTED MARGIN.—If any party to a security-based swap that is exempt from the margin requirements of paragraph (4)(A)(i) pursuant to the provisions of paragraph (4)(A)(ii) requests that such security-based swap be margined, then—

"(A) the exemption shall not apply; and

"(B) the counterparty to such security-based swap shall provide the requested margin.

"(f) REPORTING AND RECORDKEEPING.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant—

"(A) shall make such reports as are prescribed by the Commission by rule or regulation

regarding the transactions and positions and financial condition of such dealer or participant;

"(B) for which—

"(i) the Financial Institutions Regulatory Administration is the primary financial regulatory agency shall keep books and records of all activities related to its business as a security-based swap dealer or major security-based swap participant in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(ii) the Financial Institutions Regulatory Administration is not the primary financial regulatory agency shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation; and

"(C) shall keep such books and records open to inspection and examination by any representative of the Commission.

"(2) RULES.—Within 1 year of the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation

with the appropriate Federal banking agencies, shall jointly adopt rules governing reporting and record-keeping for swap dealers, major swap participants, security-based swap dealers and major security-based swap participants.

"(g) DAILY TRADING RECORDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall, for such period as may be prescribed by the Commission by rule or regulation, maintain daily trading records of that dealer's or participant's—

"(A) security-based swaps and all related records (including related transactions); and

"(B) recorded communications, including electronic mail, instant messages, and recordings of telephone calls.

"(2) INFORMATION REQUIREMENTS.—The daily trading records required to be maintained under paragraph (1) shall include such information as the Commission shall prescribe by rule or regulation.

"(3) CUSTOMER RECORDS.—Each registered security-based swap dealer or major security-based swap participant shall maintain daily trading records for each customer or counterparty in such manner

and form as to be identifiable with each security-based swap transaction.

"(4) AUDIT TRAIL.—

"(A) MAINTENANCE OF AUDIT TRAIL.—Each registered security-based swap dealer or major security-based swap participant shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.

"(B) PERMISSIBLE COMPLIANCE BY ENTITY OTHER THAN DEALER OR PARTICIPANT.—A registered security-based swap repository may, at the request of a registered security-based swap dealer or major security-based swap participant, satisfy the requirement of subparagraph (A) on behalf of such registered security-based swap dealer or major security-based swap participant.

"(5) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly adopt rules governing daily trading records for swap dealers, major swap partici-

pants, security-based swap dealers, and major security-based swap participants.

"(h) BUSINESS CONDUCT STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap participant shall conform with such business conduct standards as may be prescribed by the Commission by rule or regulation, including any standards addressing—

"(A) fraud, manipulation, and other abusive practices involving security-based swaps (including security-based swaps that are offered but not entered into);

"(B) diligent supervision of its business as a security-based swap dealer;

"(C) adherence to all applicable position limits; and

"(D) such other matters as the Commission shall determine to be necessary or appropriate.

"(2) BUSINESS CONDUCT REQUIREMENTS.—Business conduct requirements adopted by the Commission pursuant to paragraph (1) shall—

"(A) establish a standard of care for a security-based swap dealer or major security-

based swap participant to verify that any security-based swap counterparty meets the eligibility standards for an eligible contract participant;

"(B) require disclosure by the security-based swap dealer or major security-based swap participant to any counterparty to the security-based swap (other than a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant) of—

"(i) information about the material risks and characteristics of the security-based swap;

"(ii) the source and amount of any fees or other material remuneration that the security-based swap dealer or major security-based swap participant would directly or indirectly expect to receive in connection with the security-based swap; and

"(iii) any other material incentives or conflicts of interest that the security-based swap dealer or major security-based swap participant may have in connection with the security-based swap; and

"(C) establish a standard of conduct for a security-based swap dealer or major security-based swap participant to communicate in a fair and balanced manner based on principles of fair dealing and good faith;

"(D) establish a standard of conduct for a security-based swap dealer or major security-based swap participant, with respect to a counterparty that is an eligible contract participant within the meaning of subclause (I) or (II) of clause (vii) section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)), to have a reasonable basis to believe that the counterparty has an independent representative that—

"(i) has sufficient knowledge to evaluate the transaction and risks;

"(ii) is not subject to a statutory disqualification;

"(iii) is independent of the security-based swap dealer or major security-based swap participant;

"(iv) undertakes a duty to act in the best interests of the counterparty it represents;

"(v) makes appropriate disclosures; and

"(vi) will provide written representations to the eligible contract participant regarding fair pricing and the appropriateness of the transaction; and

"(E) establish such other standards and requirements as the Commission may determine are necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(3) RULES.—Not later than 1 year after the date of the enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission, in consultation with the appropriate Federal banking agencies, shall jointly prescribe rules under this subsection governing business conduct standards for swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants.

"(i) DOCUMENTATION AND BACK OFFICE STANDARDS.—

"(1) IN GENERAL.—Each registered security-based swap dealer and major security-based swap

1 participant shall conform with standards, as may be
2 prescribed by the Commission by rule or regulation,
3 addressing timely and accurate confirmation, proc-
4 essing, netting, documentation, and valuation of all
5 security-based swaps.

6 ''(2) RULES.—Not later than 1 year after the
7 date of the enactment of the Over-the-Counter De-
8 rivatives Markets Act of 2009, the Commission and
9 the Commodity Futures Trading Commission, in
10 consultation with the appropriate Federal banking
11 agencies, shall jointly adopt rules governing docu-
12 mentation and back office standards for swap deal-
13 ers, major swap participants, security-based swap
14 dealers, and major security-based swap participants.

15 ''(j) DEALER RESPONSIBILITIES.—Each registered
16 security-based swap dealer and major security-based swap
17 participant shall, at all times, comply with the following
18 requirements:

19 ''(1) MONITORING OF TRADING.—The security-
20 based swap dealer or major security-based swap par-
21 ticipant shall monitor its trading in security-based
22 swaps to prevent violations of applicable position
23 limits.

24 ''(2) DISCLOSURE OF GENERAL INFORMA-
25 TION.—The security-based swap dealer or major se-

curity-based swap participant shall disclose to the Commission and to the Financial Institutions Regulatory Administration information concerning—

"(A) terms and conditions of its security-based swaps;

"(B) security-based swap trading operations, mechanisms, and practices;

"(C) financial integrity protections relating to security-based swaps; and

"(D) other information relevant to its trading in security-based swaps.

"(3) ABILITY TO OBTAIN INFORMATION.—The security-based swap dealer or major swap security-based participant shall—

"(A) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section; and

"(B) provide the information to the Commission and to the Financial Institutions Regulatory Administration upon request.

"(4) CONFLICTS OF INTEREST.—The security-based swap dealer and major security-based swap participant shall implement conflict of interest systems and procedures that—

"(A) establish structural and institutional safeguards to assure that the activities of any person within the firm relating to research or analysis of the price or market for any security are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in trading or clearing activities might potentially bias their judgment or supervision; and

"(B) address such other issues as the Commission determines appropriate.

"(5) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, a security-based swap dealer or major security-based swap participant shall avoid—

"(A) adopting any processes or taking any actions that result in any unreasonable restraints of trade; or

"(B) imposing any material anticompetitive burden on trading.

"(k) RULES.—The Commission, the Commodity Futures Trading Commission, and the Financial Institutions Regulatory Administration shall consult with each other prior to adopting any rules under the Over-the-Counter Derivatives Markets Act of 2009.

"(l) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for a security-based swap dealer or a major security-based swap participant to permit any person associated with a security-based swap dealer or a major security-based swap participant who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such statutory disqualification.

"(m) ENFORCEMENT AND ADMINISTRATIVE PROCEEDING AUTHORITY.—

"(1) PRIMARY ENFORCEMENT AUTHORITY.—

"(A) SECURITIES AND EXCHANGE COMMISSION.—Except as provided in subsection (b), the Commission shall have primary authority to enforce the provisions of subtitle B of the Over-the-Counter Derivatives Markets Act of 2009 with respect to any person.

"(B) FIRA.—The Financial Institutions Regulatory Administration shall have exclusive authority to enforce the provisions of section

15F(e) and other prudential requirements of this Act with respect to banks, and branches or agencies of foreign banks that are security-based swap dealers or major security-based swap participants.

"(C) REFERRAL.—If the Financial Institutions Regulatory Administration has cause to believe that such security-based swap dealer or major security-based swap participant for which FIRA is the primary financial regulatory agency may have engaged in conduct that constitutes a violation of the nonprudential requirements of section 15F or rules adopted by the Commission thereunder, the Financial Institutions Regulatory Administration may recommend in writing to the Commission that the Commission initiate an enforcement proceeding as authorized under this Act. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(D) BACKSTOP ENFORCEMENT AUTHORITY.—If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which

the Commission receives a recommendation under subparagraph (C), the Financial Institutions Regulatory Administration may initiate an enforcement proceeding as permitted under Federal law.

"(2) ENFORCEMENT ACTIONS.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, or reject the filing of any security-based swap dealer or major security-based swap participant that has registered with the Commission pursuant to subsection (b) if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, or rejection is in the public interest and that such security-based swap dealer or major security-based swap participant, or any person associated with such security-based swap dealer or major security-based swap participant effecting or involved in effecting transactions in security-based swaps on behalf of such security-based swap dealer or major security-based swap participant, whether prior or subsequent to becoming so associated—

"(A) has committed or omitted any act, or is subject to an order or finding, described in

subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, described in subparagraph (G) of such paragraph (4).

"(3) PERSONNEL ENFORCEMENT ACTIONS.—With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a security-based swap dealer or major security-based swap participant for the purpose of effecting or being involved in effecting security-based swaps on behalf of such

security-based swap dealer or major security-based swap participant, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a security-based swap dealer or major security-based swap participant, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(A) has committed or omitted any act, or is subject to an order or finding, described in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b);

"(B) as been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this subsection;

"(C) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4);

"(D) is subject to an order or a final order specified in subparagraph (F) or (H), respectively, of such paragraph (4); or

"(E) has been found by a foreign financial regulatory authority to have committed or omitted any act, or violated any foreign statute or regulation, described in subparagraph (G) of such paragraph (4).

"(4) NO VIOLATIONS OF ORDERS.—It shall be unlawful—

"(A) for any person as to whom an order under paragraph (3) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a security-based swap dealer or major security-based swap participant in contravention of such order; or

"(B) for any security-based swap dealer or major security-based swap participant to permit such a person, without the consent of the Commission, to become or remain a person associated with the security-based swap dealer or major security-based swap participant in contravention of such order, if such security-based swap dealer or major security-based swap participant knew, or in the exercise of reasonable care should have known, of such order.".

(e) ADDITIONS OF SECURITY-BASED SWAPS TO CERTAIN ENFORCEMENT PROVISIONS.—Paragraphs (1)

through (3) of section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)(1)–(3)) are amended to read as follows:

"(1) any transaction in connection with any security whereby any party to such transaction acquires—

"(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

"(B) any security futures product on the security; or

"(C) any security-based swap involving the security or the issuer of the security;

"(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product; or

"(C) such security-based swap; or

"(3) any transaction in any security for the account of any person who he has reason to believe has, and who actually has, directly or indirectly, any interest in any—

"(A) such put, call, straddle, option, or privilege;

"(B) such security futures product with relation to such security; or

"(C) any security-based swap involving such security or the issuer of such security.".

(f) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS AND SECURITY-BASED SWAP AGREEMENTS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end the following:

"(j) PROHIBITION.—It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap or any security-based swap agreement, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reason-

ably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.''.

(g) POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS.—The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following new section:

''SEC. 10B. POSITION LIMITS AND POSITION ACCOUNTABILITY FOR SECURITY-BASED SWAPS AND LARGE TRADER REPORTING.

''(a) AGGREGATE POSITION LIMITS.—As a means reasonably designed to prevent fraud and manipulation, the Commission may, by rule or regulation, as necessary or appropriate in the public interest or for the protection of investors, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions that may be held by any person or persons across—

''(1) securities listed on a national securities exchange; and

''(2) security-based swaps that perform or affect a significant price discovery function with respect to regulated markets.

''(b) EXEMPTIONS.—The Commission, by rule, regulation, or order, may conditionally or unconditionally ex-

empt any person or class of persons, any security-based swap or class of security-based swaps, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.

"(c) SELF-REGULATORY ORGANIZATION RULES.—As a means reasonably designed to prevent fraud or manipulation, the Commission, by rule, regulation, or order, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, may direct a self-regulatory organization—

"(1) to adopt rules regarding the size of positions in any security-based swap and any security on which such security-based swap is based that may be held by—

"(A) any member of such self-regulatory organization; or

"(B) any person for whom a member of such self-regulatory organization effects transactions in such security-based swap or other security; and

"(2) to adopt rules reasonably designed to ensure compliance with requirements prescribed by the Commission under subsection (a).

1 "(d) LARGE SECURITY-BASED SWAP TRADER RE-
2 PORTING.—
3 "(1) PROHIBITION.—It shall be unlawful for
4 any person to enter into any security-based swap
5 if—
6 "(A) such person shall directly or indi-
7 rectly enter into such security-based swaps dur-
8 ing any 1 day in an amount equal to or in ex-
9 cess of such amount as shall be fixed from time
10 to time by the Commission; and
11 "(B) such person shall directly or indi-
12 rectly have or obtain a position in such secu-
13 rity-based swaps equal to or in excess of such
14 amount as shall be fixed from time to time by
15 the Commission, unless such person—
16 "(i) files or causes to be filed with the
17 properly designated officer of the Commis-
18 sion such reports regarding any trans-
19 actions or positions described in subpara-
20 graphs (A) and (B) as the Commission
21 may by rule or regulation require; and
22 "(ii) needs books and records of all
23 such security-based swaps and any trans-
24 actions and positions in any related secu-
25 rity traded on or subject to the rules of

any national securities exchange, and of purchase and sale commitments of, such a security.

"(2) RECORDKEEPING.—The books and records required to be kept under paragraph (1) shall—

"(A) show complete details concerning all transactions and positions as the Commission may by rule or regulation prescribe; and

"(B) be open at all times to inspection and examination by any representative of the Commission.

"(3) RULE OF CONSTRUCTION.—For the purpose of this subsection, the security-based swaps, and securities transactions and positions of any person shall include such security-based swaps, transactions and positions of any persons directly or indirectly controlled by such person.".

(h) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

"(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

"(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to para-

graph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

"(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting requirement described in paragraph (1).

"(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

"(A) clearing agencies pursuant to section 3B;

"(B) security-based swap repositories pursuant to subsection (n); and

"(C) reports received by the Commission pursuant to section 13A.

"(n) SECURITY-BASED SWAP REPOSITORIES.—

"(1) REGISTRATION REQUIREMENT.—

"(A) IN GENERAL.—A person may register as a security-based swap repository by filing with the Commission an application in such form as the Commission, by rule, may pre-

scribe, containing the rules of the security-based swap repository and such other information and documentation as the Commission, by rule, may prescribe as necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of this section.

"(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

"(2) STANDARD SETTING.—

"(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

"(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

"(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data stand-

ards imposed by the Commission on clearing agencies that clear security-based swaps.

"(3) DUTIES.—A security-based swap repository shall—

"(A) accept data prescribed by the Commission for each security-based swap under paragraph (2);

"(B) maintain such data in such form and manner and for such period as may be required by the Commission;

"(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in subsection (m); and

"(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Agency for Financial Stability, and the Department of Justice or to other persons the Commission deems appropriate, includ-

ing foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

"(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

"(5) HARMONIZATION OF RULES.—Not later than 180 days after the effective date of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1 et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

"(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission finds that such security-

based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, the Financial Institutions Regulatory Administration, or the appropriate governmental authorities in the organization's home country.''.

(i) RECORDKEEPING BY SECURITY-BASED SWAP REPOSITORIES.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by inserting ''registered security-based swap repository,'' after ''registered securities information processor,''.

SEC. 754. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further amended by adding after section 3C (as added by section 753) the following:

''SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SECURITY-BASED SWAP TRANSACTIONS.

''(a) CLEARED SECURITY-BASED SWAPS.—A security-based swap dealer or clearing agency by or through which funds or other property are held to margin, guarantee, or secure the obligations of a counterparty under a security-based swap to be cleared by or through a clearing agency shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in

accordance with such rules and regulations as the Commission shall prescribe for nonbank security-based swap dealers or clearing agencies, or the Financial Institutions Regulatory Administration shall prescribe for bank security-based swap dealers. Any such funds or other property shall be treated as customer property under this Act.

"(b) OTHER SECURITY-BASED SWAPS.—At the request of a security-based swap counterparty who provides funds or other property to a security-based swap dealer to margin, guarantee, or secure the obligations of the counterparty under a security-based swap between the counterparty and the security-based swap dealer that is not submitted for clearing to a clearing agency, the security-based swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by an independent third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission shall prescribe for nonbank security-based swap dealers or clearing agencies, or the Financial Institutions Regulatory Administration shall prescribe for bank security-based swap dealers. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the

related allocation of gains and losses resulting from any such investment, provided, however, that the segregated funds or other property under this subsection may be invested only in such investments as the Commission or the Financial Institutions Regulatory Administration, as applicable, permits by rule or regulation.''.

SEC. 755. REPORTING AND RECORDKEEPING.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 13 the following section:

''SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.

''(a) IN GENERAL.—Any person who enters into a security-based swap shall satisfy the reporting requirements under subsection (b), if such person—

''(1) did not clear the security-based swap in accordance with section 3B; and

''(2) did not have data regarding the security-based swap accepted by a security-based swap repository in accordance with rules adopted by the Commission under section 13(n).

''(b) REPORTS.—Any person described in subsection (a) shall—

"(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

"(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Agency for Financial Stability, and the Department of Justice.

"(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect under section 13(n).".

(b) BENEFICIAL OWNERSHIP REPORTING.—

(1) Section 13(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is amended by inserting "or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap or other derivative instrument that the Commission

may define by rule, and'' after ''Alaska Native Claims Settlement Act,''.

(2) Section 13(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(g)(1)) is amended by inserting ''or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap or other derivative instrument that the Commission may define by rule'' after ''subsection (d)(1) of this section''.

(c) REPORTS BY INSTITUTIONAL INVESTMENT MANAGERS.—Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(1)) is amended—

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''accounts holding''; and

(B) by inserting ''or (B) security-based derivative instruments or other derivative securities that the Commission may determine by rule, having such values as the Commission, by rule, may determine'' after ''less than $10,000,000) as the Commission, by rule, may determine.''; and

(2) in paragraph (3), by striking ''section 13(d)(1) of this title'' and inserting ''subsection

(d)(1) of this section and of security-based swaps or other derivative instrument that the Commission may determine by rule,''.

(d) ADMINISTRATIVE PROCEEDING AUTHORITY.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4)) is amended—

(1) in subparagraph (C), by inserting ''security-based swap dealer, major security-based swap participant,'' after ''government securities dealer,''; and

(2) in subparagraph (F), by inserting '', or security-based swap dealer, or a major security-based swap participant'' after ''or dealer''.

(e) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by inserting ''or security-based swaps'' after ''security futures products''.

SEC. 756. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) ADDITIONAL RIGHTS AND REMEDIES; RECOVERY OF ACTUAL DAMAGES; STATE SECURITIES COMMISSIONS.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain

a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of his actual damages on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder. No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

"(1) any put, call, straddle, option, privilege, or other security subject to this title (except a security-based swap agreement and any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

"(2) any security-based swap between eligible contract participants; or

"(3) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.".

SEC. 757. AMENDMENTS TO THE SECURITIES ACT OF 1933; TREATMENT OF SECURITY-BASED SWAPS.

(a) DEFINITIONS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (1), by inserting "security-based swap," after "security future,";

(2) in paragraph (3), by adding at the end the following: "Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities,"; and

(3) by adding at the end the following:

"(17) The terms 'swap' and 'security-based swap' have the same meanings as provided in sections 1a(35) of the Commodity Exchange Act (7

U.S.C. 1a(35)) and section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 18(c)(a)(68)), respectively.

''(18) The terms 'purchase' or 'sale' of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.''.

(b) REGISTRATION OF SECURITY-BASED SWAPS.—Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) is amended by adding at the end the following:

''(d) MANDATORY REGISTRATION: PROHIBITION ON SALE.—Notwithstanding the provisions of section 3 or section 4, except as the Commission shall otherwise exempt by rule or regulation pursuant to this title, unless a registration statement meeting the requirements of subsection (a) of section 10 is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible

contract participant as defined in section 1a(13) of the Commodity Exchange Act (7 U.S.C. 1a(13)).''.

SEC. 758. OTHER AUTHORITY.

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Commission, the Commodity Futures Trading Commission, or other Federal or State agency, of any authority derived from any other applicable law.

SEC. 759. JURISDICTION.

Section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) is amended

(1) in subsection (a)(1), by inserting ''and (c) and subject to subsection (d)'' after ''Except as provided in subsection (b)''; and

(2) by adding at the end the following:

''(c) DERIVATIVES.—The Commission shall not have the authority to grant exemptions from the security-based swap provisions of this Act or the Over-the-Counter Derivatives Markets Act of 2009, except as expressly authorized under the provisions of that Act.

''(d) EXPRESS AUTHORITY.—The Commission is expressly authorized to use any authority granted to the Commission under subsection (a) to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions

of this title, or of any rule or regulation thereunder, that applies to such person, security, or transaction solely because a 'security-based swap' is a 'security' under section 3(a).''.

Subtitle C—Other Provisions

SEC. 761. INTERNATIONAL HARMONIZATION.

In order to promote effective and consistent global regulation of swaps and security-based swaps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Financial Institutions Regulatory Administration, the Agency for Financial Stability, and the Treasury Department—

(1) shall, both individually and collectively, consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of such swaps; and

(2) may, both individually and collectively, agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors and swap counterparties.

SEC. 762. INTERAGENCY COOPERATION.

(a) JOINT ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Securities and Exchange Commission and the Commodity Futures Trading Commission, shall establish a joint advisory committee or work through an established joint advisory committee to consider and develop solutions to emerging and ongoing issues of common interest relating to the trading and regulation of products regulated by the Securities and Exchange Commission and the Commodity Futures Trading Commission, including securities, commodity futures, swaps and securities-based swaps.

(2) MEMBERSHIP.—The joint advisory committee shall—

(A) be fairly balanced in terms of the points of view represented and the functions to be performed by the committee;

(B) include at least 1 representative from each of the Securities and Exchange Commission and the Commodity Futures Trading Commission; and

(C) include other individuals with expertise in commodities and securities trading, commodities and securities law, investor protection, consumer protection, or international markets.

(3) REPORTING.—Not later than 6 months after the date of enactment of this title, and every 6 months thereafter, the joint advisory committee shall report its findings and recommendations to the—

(A) Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) Committee on Financial Services of the House of Representatives;

(C) Committee on Agriculture, Nutrition, and Forestry of the Senate; and

(D) Committee on Agriculture of the House of Representatives.

(4) JOINT FUNDING.—Notwithstanding any other provision of law, amounts made available to the Commodity Futures Trading Commission and the Securities and Exchange Commission for the current or subsequent fiscal years by a current or future appropriations Act may be used for the interagency funding of the joint advisory committee sponsored by such agencies pursuant to this section.

(b) JOINT ENFORCEMENT TASK FORCE.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly establish an interagency group to be known as the Joint Enforcement Task

Force in order to improve market oversight, enhance enforcement, and relieve duplicative regulatory burdens. The Task Force shall consist of staff from each agency to coordinate and develop processes for conducting joint investigations in response to events that affect both the commodities and securities markets. The Task Force shall prepare and offer training programs for the staffs of both agencies, develop enforcement and examination standards and protocols, and coordinate information sharing.

(c) TRADING AND MARKETS FELLOWSHIP PROGRAM.—

(1) IN GENERAL.—The Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly establish a Trading and Markets Fellowship Program in order to enhance staff understanding about the interactions between financial markets and the economy.

(2) SELECTION OF FELLOWS.—On January 1 of each calendar year, the Chairmen of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly announce the selection of 3 employees from their respective agencies to participate in the fellowship pro-

gram established under paragraph (1), for a total annual class size of 9 fellows per calendar year.

(3) JOINT TRAINING CURRICULUM.—

(A) DEVELOPMENT.—The Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System shall jointly develop a 1-month long training curriculum that focuses on the mission and activities of each agency, enforcement matters, and economic and financial analysis.

(B) FACULTY.—The training curriculum developed under subparagraph (A) shall be taught by senior officials from each agency, experienced academics, and professionals from commodities and securities trading.

(C) MANDATORY ATTENDANCE.—Each of the 9 fellows selected under paragraph (2) shall complete the training curriculum developed under this paragraph.

(4) CROSS-AGENCY ROTATION.—

(A) IN GENERAL.—Following the completion of the 1-month training curriculum developed under paragraph (3), each fellow shall be

assigned to serve at each participating agency for 3 months each.

(B) SUBMISSION OF PAPER.—Upon completion of the Trading and Markets Fellowship Program, each fellow shall submit a written paper to the Chairmen of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System—

(i) summarizing his or her observations from participating in the program; and

(ii) providing recommendations for enhancing the contribution of each agency to the stable functioning of the financial markets and economy of the nation.

(d) CROSS-AGENCY ENFORCEMENT.—The Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly establish a cross-agency training and education curriculum for enforcement personnel in order to improve the ability of employees at both agencies to understand and respond to matters where both agencies have enforcement jurisdiction and interest.

(e) DETAILING OF STAFF.—The Securities and Exchange Commission and the Commodity Futures Trading

Commission shall jointly establish a program for the regular detailing of staff between such agencies.

SEC. 763. STUDY AND REPORT ON IMPLEMENTATION.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study of—

(1) how the Commodity Futures Trading Commission and the Securities and Exchange Commission have implemented this title and the amendments made by this title;

(2) the extent to which jurisdictional disputes have created challenges in the process of implementing this title and the amendments made by this title;

(3) the benefits and drawbacks of harmonizing laws implemented by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and merging those agencies;

(4) the benefits and feasibility of—

(A) holding of both futures and securities products in the same account to allow cross-netting; and

(B) creating the ability to cross-net across securities and futures accounts; and

(5) the benefits and feasibility of imposing a uniform fiduciary duty on financial intermediaries who provide similar investment advisory services.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this title, the Comptroller General shall submit a report on the results of the study required by this section to Congress, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

SEC. 764. RECOMMENDATIONS FOR CHANGES TO INSOLVENCY LAWS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and FIRA shall transmit to Congress recommendations on legislative changes to the Federal insolvency laws—

(1) in order to enhance the legal certainty with respect to swap participants clearing swaps and security-based swaps through a derivatives clearing organization or clearing agency, including , including—

(A) customer rights to cover margin deposits or custodial property held at or through an insolvent swap clearinghouse or clearing participant; and

(B) the enforceability or clearing rules relating to the portability of customer swap positions (and associated margins) upon the insolvency of a clearing participant;

(2) to clarify and harmonize the insolvency law framework applicable to entities that are both commodity brokers (as defined in section 101(6) of title 11, United States Code) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); and

(3) to facilitate the portfolio margining of securities and commodities futures and options positions held through entities that are both futures commission merchants (as defined in section 1a of the Commodity Exchange Act) and registered brokers or dealers (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

SEC. 765. EFFECTIVE DATE.

Except as specifically provided in the amendments made by this title, this title, and the amendments made by this title, shall take effect 180 days after the date of enactment of this Act.

TITLE VIII—PAYMENT, CLEARING, AND SETTLEMENT SUPERVISION

SEC. 801. SHORT TITLE.

This title may be cited as the ''Payment, Clearing, and Settlement Supervision Act of 2009''.

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The proper functioning of the financial markets is dependent upon safe and efficient arrangements for the clearing and settlement of payment, securities, and other financial transactions.

(2) Financial market utilities that conduct or support multilateral payment, clearing, or settlement activities may reduce risks for their participants and the broader financial system, but such utilities may also concentrate and create new risks and thus must be well designed and operated in a safe and sound manner.

(3) Payment, clearing, and settlement activities conducted by financial institutions also present important risks to the participating financial institutions and to the financial system.

(4) Enhancements to the regulation and supervision of systemically important financial market

utilities and the conduct of systemically important payment, clearing, and settlement activities by financial institutions are necessary—

(A) to provide consistency;

(B) to promote robust risk management and safety and soundness;

(C) to reduce systemic risks; and

(D) to support the stability of the broader financial system.

(b) PURPOSE.—The purpose of this title is to mitigate systemic risk in the financial system and promote financial stability by—

(1) authorizing the Board of Governors to prescribe uniform standards for the—

(A) management of risks by systemically important financial market utilities; and

(B) conduct of systemically important payment, clearing, and settlement activities by financial institutions;

(2) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important financial market utilities;

(3) strengthening the liquidity of systemically important financial market utilities; and

(4) providing the Board of Governors an enhanced role in the supervision of risk management standards for systemically important payment, clearing, and settlement activities by financial institutions.

SEC. 803. DEFINITIONS.

In this title, the following definitions shall apply:

(1) DESIGNATED ACTIVITY.—The term ''designated activity'' means a payment, clearing, or settlement activity that the Agency has designated as systemically important under section 804.

(2) DESIGNATED FINANCIAL MARKET UTILITY.—The term ''designated financial market utility'' means a financial market utility that the Agency has designated as systemically important under section 804.

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' means—

(A) a depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(C) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(D) a credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(E) a broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(F) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(G) an insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(H) an investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(I) a futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(J) any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the

Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(4) FINANCIAL MARKET UTILITY.—The term ''financial market utility'' means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.

(5) PAYMENT, CLEARING, OR SETTLEMENT ACTIVITY.—

(A) IN GENERAL.—The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions.

(B) FINANCIAL TRANSACTION.—For the purposes of subparagraph (A), the term ''financial transaction'' includes—

(i) funds transfers;

(ii) securities contracts;

(iii) contracts of sale of a commodity for future delivery;

(iv) forward contracts;

(v) repurchase agreements;

(vi) swap agreements;

(vii) security-based swap agreements;

(viii) foreign exchange contracts;

(ix) financial derivatives contracts; and

(x) any similar transaction that the Agency determines, by rule or order, to be a financial transaction for purposes of this title.

(C) INCLUDED ACTIVITIES.—When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) the calculation and communication of unsettled financial transactions between counterparties;

(ii) the netting of transactions;

(iii) provision and maintenance of trade, contract, or instrument information;

(iv) the management of risks and activities associated with continuing financial transactions;

(v) transmittal and storage of payment instructions;

(vi) the movement of funds;

(vii) the final settlement of financial transactions; and

(viii) other similar functions that the Agency may determine by rule or order.

(6) SUPERVISORY AGENCY.—

(A) IN GENERAL.—The term ''Supervisory Agency'' means the Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws, including—

(i) the Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(ii) the Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission; and

(iii) the Financial Institutions Regulatory Administration, with respect to a designated financial market utility that is—

(I) an insured State nonmember bank or an insured branch of a foreign bank;

(II) a national bank or a Federal branch (other than an insured branch) or a Federal agency of a foreign bank;

(III) a savings association or a savings and loan holding company; or

(IV) otherwise not subject to the jurisdiction of any agency listed in clauses (i) and (ii).

(B) MULTIPLE AGENCY JURISDICTION.—If a designated financial market utility is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Agency shall decide which agency is the Supervisory Agency for purposes of this title.

(7) SYSTEMICALLY IMPORTANT AND SYSTEMIC IMPORTANCE.—The terms ''systemically important'' and ''systemic importance'' mean a situation where

the failure of or a disruption to the functioning of a financial market utility or the conduct of a payment, clearing, or settlement activity could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system.

SEC. 804. DESIGNATION OF SYSTEMIC IMPORTANCE.

(a) DESIGNATION.—

(1) AGENCY FOR FINANCIAL STABILITY.—The Agency, on a nondelegable basis, shall designate those financial market utilities or payment, clearing, or settlement activities that the Agency determines are, or are likely to become, systemically important.

(2) CONSIDERATIONS.—In determining whether a financial market utility or payment, clearing, or settlement activity is, or is likely to become, systemically important, the Agency shall take into consideration the following:

(A) The aggregate monetary value of transactions processed by the financial market utility or carried out through the payment, clearing, or settlement activity.

(B) The aggregate exposure of the financial market utility or a financial institution en-

gaged in payment, clearing, or settlement activities to its counterparties.

(C) The relationship, interdependencies, or other interactions of the financial market utility or payment, clearing, or settlement activity with other financial market utilities or payment, clearing, or settlement activities.

(D) The effect that the failure of or a disruption to the financial market utility or payment, clearing, or settlement activity would have on critical markets, financial institutions, or the broader financial system.

(E) Any other factors that the Agency deems appropriate.

(b) RESCISSION OF DESIGNATION.—

(1) IN GENERAL.—The Agency, on a nondelegable basis, shall rescind a designation of systemic importance for a designated financial market utility or designated activity if the Agency determines that the utility or activity no longer meets the standards for systemic importance.

(2) EFFECT OF RESCISSION.—Upon rescission, the financial market utility or financial institutions conducting the activity will no longer be subject to

the provisions of this title or any rules or orders prescribed by the Agency under this title.

(c) CONSULTATION AND NOTICE AND OPPORTUNITY FOR HEARING.—

(1) FINANCIAL MARKET UTILITY.—Before making any determination under subsection (a) or (b) with regard to a financial market utility, the Agency shall consult with the relevant Supervisory Agency and the Board of Governors.

(2) ADVANCE NOTICE AND OPPORTUNITY FOR HEARING.—

(A) IN GENERAL.—Before making any determination under subsection (a) or (b) with regard to a financial market utility or a payment, clearing, or settlement activity, the Agency shall provide the financial market utility or, in the case of a payment, clearing, or settlement activity, financial institutions with advance notice of the proposed determination of the Agency.

(B) NOTICE IN FEDERAL REGISTER.—The Agency shall provide such advance notice to financial institutions by publishing a notice in the Federal Register.

(C) REQUESTS FOR HEARING.—Within 30 days from the date of any notice of the pro-

posed determination of the Agency, the financial market utility or, in the case of a payment, clearing, or settlement activity, a financial institution engaged in the designated activity may request in writing an opportunity for a written or oral hearing before the Agency to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(D) WRITTEN SUBMISSIONS.—Upon receipt of a timely request, the Agency shall fix a time, not more than 30 days after receipt of the request, unless extended at the request of the financial market utility or financial institution, and place at which the financial market utility or financial institution may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Agency, oral testimony or oral argument.

(3) EMERGENCY EXCEPTION.—

(A) WAIVER OR MODIFICATION BY VOTE OF THE AGENCY.—The Agency may waive or modify the requirements of paragraph (2) if the Agency determines, by an affirmative vote of not less than ⅔ of all members then serving

and available, that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility or the payment, clearing, or settlement activity.

(B) NOTICE OF WAIVER OR MODIFICATION.—The Agency shall provide notice of the waiver or modification to the financial market utility concerned or, in the case of a payment, clearing, or settlement activity, to financial institutions, as soon as practicable, which shall be no later than 24 hours after the waiver or modification in the case of a financial market utility and 3 business days in the case of financial institutions. The Agency shall provide the notice to financial institutions by posting a notice on the website of the Agency and by publishing a notice in the Federal Register.

(d) NOTIFICATION OF FINAL DETERMINATION.—

(1) AFTER HEARING.—Within 60 days of any hearing under subsection (c)(3), the Agency shall notify the financial market utility or financial institutions of the final determination of the Agency in writing, which shall include findings of fact upon which the determination of the Agency is based.

(2) WHEN NO HEARING REQUESTED.—If the Agency does not receive a timely request for a hearing under subsection (c)(3), the Agency shall notify the financial market utility or financial institutions of the final determination of the Agency in writing not later than 30 days after the expiration of the date by which a financial market utility or a financial institution could have requested a hearing. All notices to financial institutions under this subsection shall be published in the Federal Register.

(e) EXTENSION OF TIME PERIODS.—The Agency may extend the time periods established in subsections (c) and (d) as the Agency determines to be necessary or appropriate.

SEC. 805. STANDARDS FOR SYSTEMICALLY IMPORTANT FINANCIAL MARKET UTILITIES AND PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The Board, by rule or order, and in consultation with the Agency and the appropriate Supervisory Agencies, shall prescribe risk management standards, taking into consideration relevant international standards and existing prudential requirements, governing—

(1) the operations of designated financial market utilities; and

(2) the conduct of designated activities by financial institutions.

(b) OBJECTIVES AND PRINCIPLES.—The objectives and principles for the risk management standards prescribed under subsection (a) shall be to—

(1) promote robust risk management;

(2) promote safety and soundness;

(3) reduce systemic risks; and

(4) support the stability of the broader financial system.

(c) SCOPE.—The standards prescribed under subsection (a) may address areas such as—

(1) risk management policies and procedures;

(2) margin and collateral requirements;

(3) participant or counterparty default policies and procedures;

(4) the ability to complete timely clearing and settlement of financial transactions;

(5) capital and financial resource requirements for designated financial market utilities; and

(6) other areas that the Board determines are necessary to achieve the objectives and principles in subsection (b).

(d) THRESHOLD LEVEL.—The standards prescribed under subsection (a) governing the conduct of designated

activities by financial institutions shall, where appropriate, establish a threshold as to the level or significance of engagement in the activity at which a financial institution will become subject to the standards with respect to that activity.

(e) COMPLIANCE REQUIRED.—Designated financial market utilities and financial institutions subject to the standards prescribed by the Board of Governors for a designated activity shall conduct their operations in compliance with the applicable risk management standards prescribed by the Board of Governors.

SEC. 806. OPERATIONS OF DESIGNATED FINANCIAL MARKET UTILITIES.

(a) FEDERAL RESERVE ACCOUNT AND SERVICES.—The Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated financial market utility and provide services to the designated financial market utility that the Federal Reserve Bank is authorized under the Federal Reserve Act to provide to a depository institution, subject to any applicable rules, orders, standards, or guidelines prescribed by the Board of Governors.

(b) ADVANCES.—The Board of Governors may authorize a Federal Reserve Bank to provide to a designated financial market utility the same discount and borrowing

1 privileges as the Federal Reserve Bank may provide to a
2 depository institution under the Federal Reserve Act, sub-
3 ject to any applicable rules, orders, standards, or guide-
4 lines prescribed by the Board of Governors.

5 (c) EARNINGS ON FEDERAL RESERVE BALANCES.—
6 A Federal Reserve Bank may pay earnings on balances
7 maintained by or on behalf of a designated financial mar-
8 ket utility in the same manner and to the same extent
9 as the Federal Reserve Bank may pay earnings to a depos-
10 itory institution under the Federal Reserve Act, subject
11 to any applicable rules, orders, standards, or guidelines
12 prescribed by the Board of Governors.

13 (d) RESERVE REQUIREMENTS.—The Board of Gov-
14 ernors may exempt a designated financial market utility
15 from, or modify any, reserve requirements under section
16 19 of the Federal Reserve Act (12 U.S.C. 461) applicable
17 to a designated financial market utility.

18 (e) CHANGES TO RULES, PROCEDURES, OR OPER-
19 ATIONS.—

20 (1) REFERENCE.—For purposes of paragraphs
21 (2) and (3), all references to the phrase ''Super-
22 visory Agency or the Board of Governors'' mean
23 ''Supervisory Agency or, in the absence of a Super-
24 visory Agency, the Board of Governors''.

25 (2) ADVANCE NOTICE.—

(A) ADVANCE NOTICE OF PROPOSED CHANGES REQUIRED.—A designated financial market utility shall provide 60-days' advance notice to its Supervisory Agency and the Board of Governors of any proposed change to its rules, procedures, or operations that could, as defined in rules of the Board of Governors, materially affect, the nature or level of risks presented by the designated financial market utility.

(B) TERMS AND STANDARDS PRESCRIBED BY THE BOARD OF GOVERNORS.—The Board of Governors shall prescribe regulations that define and describe the standards for determining when notice is required to be provided under subparagraph (A).

(C) CONTENTS OF NOTICE.—The notice of a proposed change shall describe—

(i) the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) how the designated financial market utility plans to manage any identified risks.

(D) ADDITIONAL INFORMATION.—The Supervisory Agency or the Board of Governors may require a designated financial market utility to provide any information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the designated financial market utility's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(E) NOTICE OF OBJECTION.—The Supervisory Agency or the Board of Governors shall notify the designated financial market utility of any objection regarding the proposed change within 60 days from the later of—

(i) the date that the notice of the proposed change is received; or

(ii) the date any further information requested for consideration of the notice is received.

(F) CHANGE NOT ALLOWED IF OBJECTION.—A designated financial market utility shall not implement a change to which the Board of Governors or the Supervisory Agency has an objection.

(G) CHANGE ALLOWED IF NO OBJECTION WITHIN 60 DAYS.—A designated financial market utility may implement a change if it has not received an objection to the proposed change within 60 days of the later of—

(i) the date that the Supervisory Agency or the Board of Governors receives the notice of proposed change; or

(ii) the date the Supervisory Agency or the Board of Governors receives any further information it requests for consideration of the notice.

(H) REVIEW EXTENSION FOR NOVEL OR COMPLEX ISSUES.—The Supervisory Agency or the Board of Governors may, during the 60-day review period, extend the review period for an additional 60 days for proposed changes that raise novel or complex issues, subject to the Supervisory Agency or the Board of Governors providing the designated financial market utility with prompt written notice of the extension. Any extension under this subparagraph will extend the time periods under subparagraphs (D) and (F).

(I) CHANGE ALLOWED EARLIER IF NOTIFIED OF NO OBJECTION.—A designated financial market utility may implement a change in less than 60 days from the date of receipt of the notice of proposed change by the Supervisory Agency or the Board of Governors, or the date the Supervisory Agency or the Board of Governors receives any further information it requested, if the Supervisory Agency or the Board of Governors notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Supervisory Agency or the Board of Governors.

(3) EMERGENCY CHANGES.—

(A) IN GENERAL.—A designated financial market utility may implement a change that would otherwise require advance notice under this subsection if it determines that—

(i) an emergency exists; and

(ii) immediate implementation of the change is necessary for the designated financial market utility to continue to pro-

vide its services in a safe and sound manner.

(B) NOTICE REQUIRED WITHIN 24 HOURS.—The designated financial market utility shall provide notice of any such emergency change to its Supervisory Agency and the Board of Governors, as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(C) CONTENTS OF EMERGENCY NOTICE.—In addition to the information required for changes requiring advance notice, the notice of an emergency change shall describe—

(i) the nature of the emergency; and

(ii) the reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(D) MODIFICATION OR RESCISSION OF CHANGE MAY BE REQUIRED.—The Supervisory Agency or the Board of Governors may require modification or rescission of the change if it finds that the change is not consistent with the purposes of this Act or any rules, orders, or

standards prescribed by the Board of Governors hereunder.

(4) COPYING THE BOARD OF GOVERNORS.—In the case of a designated financial market utility that has a Supervisory Agency, the Supervisory Agency shall provide the Board of Governors concurrently with a complete copy of any notice, request, or other information it issues, submits, or receives under this subsection.

(5) CONSULTATION WITH BOARD OF GOVERNORS.—Before taking any action on, or completing its review of, a change proposed by a designated financial market utility, the Supervisory Agency shall consult with the Board of Governors.

SEC. 807. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST DESIGNATED FINANCIAL MARKET UTILITIES.

(a) EXAMINATION.—Notwithstanding any other provision of law and subject to subsection (d), the Supervisory Agency shall conduct examinations of a designated financial market utility at least once annually in order to determine the following:

(1) The nature of the operations of, and the risks borne by, the designated financial market utility.

(2) The financial and operational risks presented by the designated financial market utility to financial institutions, critical markets, or the broader financial system.

(3) The resources and capabilities of the designated financial market utility to monitor and control such risks.

(4) The safety and soundness of the designated financial market utility.

(5) The designated financial market utility's compliance with—

(A) this title; and

(B) the rules and orders prescribed by the Board of Governors under this title.

(b) SERVICE PROVIDERS.—Whenever a service integral to the operation of a designated financial market utility is performed for the designated financial market utility by another entity, whether an affiliate or non-affiliate and whether on or off the premises of the designated financial market utility, the Supervisory Agency may examine whether the provision of that service is in compliance with applicable law, rules, orders, and standards to the same extent as if the designated financial market utility were performing the service on its own premises.

(c) ENFORCEMENT.—For purposes of enforcing the provisions of this section, a designated financial market utility shall be subject to, and the appropriate Supervisory Agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Supervisory Agency was the appropriate Federal banking agency for such insured depository institution.

(d) BOARD OF GOVERNORS INVOLVEMENT IN EXAMINATIONS.—

(1) BOARD OF GOVERNORS CONSULTATION ON EXAMINATION PLANNING.—The Supervisory Agency shall consult with the Board of Governors regarding the scope and methodology of any examination conducted under subsections (a) and (b).

(2) BOARD OF GOVERNORS PARTICIPATION IN EXAMINATION.—The Board of Governors may, in its discretion, participate in any examination led by a Supervisory Agency and conducted under subsections (a) and (b).

(e) BOARD OF GOVERNORS ENFORCEMENT RECOMMENDATIONS.—

(1) RECOMMENDATION.—The Board of Governors may at any time recommend to the Supervisory Agency that such agency take enforcement action against a designated financial market utility. Any such recommendation for enforcement action shall provide a detailed analysis supporting the recommendation of the Board of Governors.

(2) CONSIDERATION.—The Supervisory Agency shall consider the recommendation of the Board of Governors and submit a response to the Board of Governors within 30 days.

(3) MEDIATION.—If the Supervisory Agency rejects, in whole or in the part, the recommendation of the Board of Governors, the Board of Governors may dispute the matter by referring the recommendation to the Agency, which shall attempt to resolve the dispute.

(4) ENFORCEMENT ACTION.—If the Agency is unable to resolve the dispute under paragraph (3) within 30 days from the date of referral, the Board of Governors may—

(A) exercise the enforcement authority referenced in subsection (c) as if it were the Supervisory Agency; and

(B) take enforcement action against the designated financial market utility.

(f) DESIGNATED FINANCIAL MARKET UTILITIES WITHOUT A SUPERVISORY AGENCY.—In the case of a designated financial market utility that is not under the primary jurisdiction of a Supervisory Agency, the Board of Governors shall have examination and enforcement authority under subsections (a) through (c) with respect to the designated financial market utility and any service providers in the same manner and to the same extent as if the Board of Governors were the Supervisory Agency.

(g) EMERGENCY ENFORCEMENT ACTIONS BY THE BOARD OF GOVERNORS.—

(1) IMMINENT RISK OF SUBSTANTIAL HARM.—The Board of Governors may, after consulting with the Agency and the Supervisory Agency, take enforcement action against a designated financial market utility if the Board of Governors has reasonable cause to believe that—

(A) either—

(i) an action engaged in, or contemplated by, a designated financial market utility (including any change proposed by the designated financial market utility to its rules, procedures, or operations that

would otherwise be subject to section 806(e)) poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; or

(ii) the condition of a designated financial market utility, poses an imminent risk of substantial harm to financial institutions, critical markets, or the broader financial system; and

(B) the imminent risk of substantial harm precludes the Board of Governors' use of the procedures in subsection (e).

(2) ENFORCEMENT AUTHORITY.—For purposes of taking enforcement action under paragraph (1), a designated financial market utility shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the designated financial market utility was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

(3) PROMPT NOTICE TO SUPERVISORY AGENCY OF ENFORCEMENT ACTION.—Within 24 hours of taking an enforcement action under this subsection, the Board of Governors shall provide written notice to the designated financial market utility's Supervisory Agency containing a detailed analysis of the action of the Board of Governors, with supporting documentation included.

SEC. 808. EXAMINATION OF AND ENFORCEMENT ACTIONS AGAINST FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS FOR DESIGNATED ACTIVITIES.

(a) EXAMINATION.—The primary financial regulatory agency is authorized to examine a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to determine the following:

(1) The nature and scope of the designated activities engaged in by the financial institution.

(2) The financial and operational risks the designated activities engaged in by the financial institution may pose to the safety and soundness of the financial institution.

(3) The financial and operational risks the designated activities engaged in by the financial institu-

tion may pose to other financial institutions, critical markets, or the broader financial system.

(4) The resources available to and the capabilities of the financial institution to monitor and control the risks described in paragraphs (2) and (3).

(5) The financial institution's compliance with this title and the rules and orders prescribed by the Board of Governors under this title.

(b) ENFORCEMENT.—For purposes of enforcing the provisions of this section, and the rules and orders prescribed by the Board of Governors under this section, a financial institution subject to the standards prescribed by the Board of Governors for a designated activity shall be subject to, and the primary financial regulatory agency shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the primary financial regulatory agency was the appropriate Federal banking agency for such insured depository institution.

(c) TECHNICAL ASSISTANCE.—The Board of Governors shall consult with and provide such technical assistance as may be required by the primary financial regulatory agencies to ensure that the rules and orders pre-

scribed by the Board of Governors under this title are interpreted and applied in as consistent and uniform a manner as practicable.

(d) DELEGATION.—

(1) EXAMINATION.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to conduct or participate in an examination of a financial institution subject to the standards prescribed by the Board of Governors for a designated activity in order to assess the compliance of such financial institution with—

(i) this title; or

(ii) the rules or orders prescribed by the Board of Governors under this title.

(B) EXAMINATION BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors will conduct the examination under such terms and conditions to which the Board of Governors and the primary financial regulatory agency mutually agree.

(2) ENFORCEMENT.—

(A) REQUEST TO BOARD OF GOVERNORS.—The primary financial regulatory agency may request the Board of Governors to enforce this title or the rules or orders prescribed by the Board of Governors under this title against a financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(B) ENFORCEMENT BY BOARD OF GOVERNORS.—Upon receipt of an appropriate written request, the Board of Governors shall determine whether an enforcement action is warranted, and, if so, it shall enforce compliance with this title or the rules or orders prescribed by the Board of Governors under this title and, if so, the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured depository institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution

(e) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—

(1) EXAMINATION AND ENFORCEMENT.—Notwithstanding any other provision of law, the Board of Governors may—

(A) conduct an examination of any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity; and

(B) enforce the provisions of this title or any rules or orders prescribed by the Board of Governors under this title against any financial institution that is subject to the standards prescribed by the Board of Governors for a designated activity.

(2) LIMITATIONS.—

(A) EXAMINATION.—The Board of Governors may exercise the authority described in paragraph (1)(A) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under

this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Agency of its belief under clause (i) with supporting documentation included;

(iii) requested the primary financial regulatory agency to conduct a prompt examination of the financial institution; and

(iv) either—

(I) not been afforded a reasonable opportunity to participate in an examination of the financial institution by the primary financial regulatory agency within 30 days after the date of the Board's notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to

the Board of Governors affording the primary financial regulatory agency a reasonable opportunity to participate in the examination.

(B) ENFORCEMENT.—The Board of Governors may exercise the authority described in paragraph (1)(B) only if the Board of Governors has—

(i) reasonable cause to believe that a financial institution is not in compliance with this title or the rules or orders prescribed by the Board of Governors under this title with respect to a designated activity;

(ii) notified, in writing, the primary financial regulatory agency and the Agency of its belief under clause (i) with supporting documentation included and with a recommendation that the primary financial regulatory agency take 1 or more specific enforcement actions against the financial institution; and

(iii) either—

(I) not been notified, in writing, by the primary financial regulatory

agency of the commencement of an enforcement action recommended by the Board of Governors against the financial institution within 30 days from the date of the notification under clause (ii); or

(II) reasonable cause to believe that the financial institution's noncompliance with this title or the rules or orders prescribed by the Board of Governors under this title poses a substantial risk to other financial institutions, critical markets, or the broader financial system, subject to the Board of Governors notifying the primary financial regulatory agency of the Board's enforcement action.

(3) ENFORCEMENT PROVISIONS.—For purposes of taking enforcement action under paragraph (1), the financial institution shall be subject to, and the Board of Governors shall have authority under the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if the financial institution was an insured deposi-

tory institution and the Board of Governors was the appropriate Federal banking agency for such insured depository institution.

SEC. 809. REQUESTS FOR INFORMATION, REPORTS, OR RECORDS.

(a) INFORMATION TO ASSESS SYSTEMIC IMPORTANCE.—

(1) FINANCIAL MARKET UTILITIES.—The Agency is authorized to require any financial market utility to submit such information as the Agency may require for the sole purpose of assessing whether that financial market utility is systemically important, but only if the Agency has reasonable cause to believe that the financial market utility meets the standards for systemic importance set forth in section 804.

(2) FINANCIAL INSTITUTIONS ENGAGED IN PAYMENT, CLEARING, OR SETTLEMENT ACTIVITIES.—The Agency is authorized to require any financial institution to submit such information as the Agency may require for the sole purpose of assessing whether any payment, clearing, or settlement activity engaged in or supported by a financial institution is systemically important, but only if the Agency has reasonable cause to believe that the activity meets

the standards for systemic importance set forth in section 804.

(b) REPORTING AFTER DESIGNATION.—

(1) DESIGNATED FINANCIAL MARKET UTILITIES.—The Board of Governors and the Agency may require a designated financial market utility to submit reports or data to the Board of Governors and the Agency in such frequency and form as deemed necessary by the Board of Governors and the Agency in order to assess the safety and soundness of the utility and the systemic risk that the utility's operations pose to the financial system.

(2) FINANCIAL INSTITUTIONS SUBJECT TO STANDARDS DESIGNATED ACTIVITIES.—The Board of Governors and the Agency may require 1 or more financial institutions subject to the standards prescribed by the Board of Governors for a designated activity to submit, in such frequency and form as deemed necessary by the Board of Governors and the Agency, reports and data to the Board of Governors and the Agency solely with respect to the conduct of the designated activity and solely to assess whether—

(A) the rules, orders, or standards prescribed by the Board of Governors with respect

to the designated activity appropriately address the risks to the financial system presented by such activity; and

(B) the financial institutions are in compliance with this title and the rules and orders prescribed by the Board of Governors under this title with respect to the designated activity.

(c) COORDINATION WITH APPROPRIATE FEDERAL SUPERVISORY AGENCY.—

(1) ADVANCE COORDINATION.—Before directly requesting any material information from, or imposing reporting or recordkeeping requirements on, any financial market utility or any financial institution engaged in a payment, clearing, or settlement activity, the Board of Governors and the Agency shall coordinate with the Supervisory Agency for a financial market utility or the primary financial regulatory agency for a financial institution to determine if the information is available from or may be obtained by the agency in the form, format, or detail required by the Board of Governors and the Agency.

(2) SUPERVISORY REPORTS.—Notwithstanding any other provision of law, the Supervisory Agency, the primary financial regulatory agency, and the Board of Governors are authorized to disclose to

each other and the Agency a copy of any examination report a copy of any examination report or similar report regarding any financial market utility or any financial institution engaged in payment, clearing, or settlement activities.

(d) TIMING OF RESPONSE FROM APPROPRIATE FEDERAL SUPERVISORY AGENCY.—If the information, report, records, or data requested by the Board of Governors or the Agency under subsection (c)(1) are not provided in full by the Supervisory Agency or the primary financial regulatory agency in less than 15 days after the date on which the material is requested, the Board of Governors or the Agency may request the information or impose recordkeeping or reporting requirements directly on such persons as provided in subsections (a) and (b) with notice to the agency.

(e) SHARING OF INFORMATION.—

(1) MATERIAL CONCERNS.—Notwithstanding any other provision of law, the Board of Governors, the Agency, the primary financial regulatory agency, and any Supervisory Agency are authorized to—

(A) promptly notify each other of material concerns about a designated financial market utility or any financial institution engaged in designated activities; and

(B) share appropriate reports, information or data relating to such concerns.

(2) OTHER INFORMATION.—Notwithstanding any other provision of law, the Board of Governors, the Agency, the primary financial regulatory agency, or any Supervisory Agency may, under such terms and conditions as it deems appropriate, provide confidential supervisory information and other information obtained under this title to other persons it deems appropriate, including the Secretary, State financial institution supervisory agencies, foreign financial supervisors, foreign central banks, and foreign finance ministries, subject to reasonable assurances of confidentiality.

(f) PRIVILEGE MAINTAINED.—The Board of Governors, the Agency, the primary financial regulatory agency, and any Supervisory Agency providing reports or data under this section shall not be deemed to have waived any privilege applicable to those reports or data, or any portion thereof, by providing the reports or data to the other party or by permitting the reports or data, or any copies thereof, to be used by the other party.

(g) DISCLOSURE EXEMPTION.—Information obtained by the Board of Governors or the Agency under this section and any materials prepared by the Board of Gov-

ernors or the Agency regarding its assessment of the systemic importance of financial market utilities or any payment, clearing, or settlement activities engaged in by financial institutions, and in connection with its supervision of designated financial market utilities and designated activities, shall be confidential supervisory information exempt from disclosure under section 552 of title 5, United States Code. For purposes of such section 552, this subsection shall be considered a statute described in subsection (b)(3) of such section 552.

SEC. 810. RULEMAKING.

The Board of Governors and the Agency are authorized to prescribe such rules and issue such orders as may be necessary to administer and carry out the authorities and duties granted to the Board of Governors or the Agency, respectively, and prevent evasions thereof.

SEC. 811. OTHER AUTHORITY.

Unless otherwise provided by its terms, this title does not divest any primary financial regulatory agency, any Supervisory Agency, or any other Federal or State agency, of any authority derived from any other applicable law, except that any standards prescribed by the Board of Governors under section 805 shall supersede any less stringent requirements established under other authority to the extent of any conflict.

SEC. 812. EFFECTIVE DATE.

This title is effective as of the date of enactment of this Act.

TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGULATION OF SECURITIES

Subtitle A—Increasing Investor Protection

SEC. 911. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following:

"SEC. 39. INVESTOR ADVISORY COMMITTEE.

"(a) ESTABLISHMENT AND PURPOSE.—

"(1) ESTABLISHMENT.—There is established within the Commission the Investor Advisory Committee (referred to in this section as the 'Committee').

"(2) PURPOSE.—The Committee shall—

"(A) advise and consult with the Commission on—

"(i) regulatory priorities of the Commission;

"(ii) issues relating to the regulation of securities products, trading strategies,

and fee structures, and the effectiveness of disclosure;

"(iii) initiatives to protect investor interest; and

"(iv) initiatives to promote investor confidence and the integrity of the securities marketplace; and

"(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed legislative changes.

"(b) MEMBERSHIP.—

"(1) IN GENERAL.—The members of the Commission shall be—

"(A) the Investor Advocate;

"(B) a representative of State securities commissions; and

"(C) not fewer than 13, and not more than 23, members appointed by the Commission, from among individuals who—

"(i) represent the interests of individual equity and debt investors;

"(ii) represent the interests of institutional investors;

"(iii) are knowledgeable about investment issues;

"(iv) are experienced with investments; and

"(v) have reputations of integrity.

"(2) TERM.—

"(A) LENGTH.—Each member of the Commission appointed under paragraph (1)(B) shall serve for a term of 5 years.

"(B) LIMITATION ON CONSECUTIVE TERMS.—No member of the Commission appointed under paragraph (1)(B) may serve for more than 2 consecutive terms.

"(3) MEMBERS NOT COMMISSION EMPLOYEES.—Members appointed under paragraph (1)(B) shall not be deemed to be employees or agents of the Commission solely because of membership on the Committee.

"(c) CHAIRMAN; VICE CHAIRMAN; SECRETARY; ASSISTANT SECRETARY.—

"(1) IN GENERAL.—The members of the Committee shall elect, from among the members of the Committee—

"(A) a chairman;

"(B) a vice chairman;

"(C) a secretary; and

"(D) an assistant secretary.

"(2) TERM.—Each member elected under paragraph (1) shall serve for a term of 3 years in the capacity for which the member was elected under paragraph (1).

"(d) MEETINGS.—

"(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

"(A) not less frequently than twice annually; and

"(B) from time to time, at the call of the Commission.

"(2) NOTICE.—The chairman of the Committee shall give the members of the Committee notice of each meeting, not later than 2 weeks before the date of the meeting.

"(e) COMPENSATION AND TRAVEL EXPENSES.—Each member of the Committee who is not a full-time employee of the United States shall—

"(1) be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which the member

is engaged in the actual performance of the duties of the Committee; and

"(2) while away from the home or regular place of business of the member in the performance of services for the Committee, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

"(f) STAFF.—The Commission shall provide to the Committee such staff as are necessary to carry out this section.

"(g) REVIEW BY COMMISSION.—The Commission shall—

"(1) review the findings and recommendations of the Committee; and

"(2) each time the Committee submits a finding or recommendation to the Commission, issue a public statement—

"(A) assessing the finding or recommendation of the Committee; and

"(B) disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.

"(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

"(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the Committee and its activities.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out this section.".

SEC. 912. CLARIFICATION OF AUTHORITY OF THE COMMISSION TO ENGAGE IN CONSUMER TESTING.

Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following:

"(e) EVALUATION OF RULES OR PROGRAMS.—

"(1) IN GENERAL.—For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C.78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

"(A) gather information from and communicate with investors or other members of the public; and

"(B) engage in such temporary programs as the Commission determines are in the public interest or would protect investors.

"(2) DELEGATION.—The Commission may delegate to the staff of the Commission any of the authority of the Commission under this subsection.".

SEC. 913. REGULATION OF BROKERS, DEALERS, AND INVESTMENT ADVISERS.

(a) DEFINITION OF INVESTMENT ADVISER.—Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)) is amended—

(1) by striking "any broker" and all that follows through "therefor; (D)";

(2) by striking "(E)" and inserting "(D)"; and

(3) by striking "(F)" and inserting "(E)".

(b) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 206 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6) is amended—

(1) by striking "It shall" and inserting the following:

"(a) IN GENERAL.—Except as provided in subparagraph (b), it shall"; and

(2) by adding at the end the following:

"(b) EXCEPTIONS.—The Commission may, by rule, exempt any person or transaction, or any class of persons

or transactions from the prohibition under subsection (a)(3), if the Commission determines that—

"(1) such exemption is in the public interest and for the protection of investors; and

"(2) the adviser provides investors with adequate protection against conflicts of interest or principal transactions that are not in the best interests of the investors.".

(c) ASSET MANAGEMENT FEES AND OTHER COMPENSATION.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended by adding at the end the following:

"(f) ASSET MANAGEMENT FEES AND OTHER COMPENSATION PERMITTED.—Nothing in this section prohibits an investment adviser from entering into an investment advisory relationship that provides for the payment of an asset management fee or a commission.".

(d) DISCLOSURE REQUIRED.—Section 206(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(a)), as so designated by this subtitle, is amended—

(1) in paragraph (4), by striking "paragraph (4)" and inserting "paragraph (5)";

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) to fail to disclose to any client or prospective client any material limitation on the range of investment products about which the investment advisor gives advice; or''.

SEC. 914. OFFICE OF THE INVESTOR ADVOCATE.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

''(g) OFFICE OF THE INVESTOR ADVOCATE.—

''(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the 'Office').

''(2) INVESTOR ADVOCATE.—

''(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

''(i) report directly to the Commission; and

''(ii) be appointed by the Commission from among individuals having experience in advocating for the interests of investors in securities and investor protection issues from the perspective of investors.

"(B) COMPENSATION.—The Commission shall fix the annual compensation of the Investor Advocate at a level equal to that of the most highly paid employee of the Commission who is not a commissioner.

"(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

"(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

"(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

"(3) STAFF OF OFFICE.—The Investor Advocate may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions of the Office.

"(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

"(A) assist investors in resolving problems with the Commission and with self-regulatory organizations;

"(B) identify areas in which investors have encountered significant problems in dealings with the Commission and self-regulatory organizations;

"(C) analyze the potential impact on investors of—

"(i) proposed regulations of the Commission; and

"(ii) proposed rules of self-regulatory organizations registered under this title;

"(D) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and the rules of self-regulatory organizations to mitigate problems identified under this paragraph; and

"(E) recommend to the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph.

"(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

"(6) ANNUAL REPORTS.—

"(A) REPORT ON OBJECTIVES.—

"(i) IN GENERAL.—Not later than June 30 of each year after 2009, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

"(B) REPORT ON ACTIVITIES.—

"(i) IN GENERAL.—Not later than December 31 of each year after 2009, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

"(ii) CONTENTS.—Each report required under clause (i) shall include—

"(I) appropriate statistical information and full and substantive analysis;

"(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

"(III) a summary of not fewer than 20 of the most serious problems encountered by investors in dealings with the Commission or self-regulatory organizations during the reporting period;

"(IV) an inventory of the items described in subclauses (III) that includes—

"(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

"(bb) the length of time that each item has remained on such inventory; and

"(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

"(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

"(VI) any other information, as determined appropriate by the Investor Advocate.

"(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

"(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal

response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.''.

SEC. 915. STREAMLINING OF FILING PROCEDURES FOR SELF-REGULATORY ORGANIZATIONS.

(a) FILING PROCEDURES.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by striking paragraph (2) (including the undesignated matter immediately following subparagraph (B)) and inserting the following:

''(2) APPROVAL PROCESS.—

''(A) APPROVAL PROCESS ESTABLISHED.—

''(i) IN GENERAL.—Except as provided in clause (ii), not later than 45 days after the date of publication of a proposed rule change under paragraph (1), the Commission shall—

''(I) by order, approve the proposed rule change; or

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

''(ii) EXTENSION OF TIME PERIOD.—The Commission may extend the period es-

tablished under clause (i) by not more than an additional 45 days, if—

"(I) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(II) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(B) PROCEEDINGS.—

"(i) NOTICE AND HEARING.—If the Commission does not approve a proposed rule change under subparagraph (A), the Commission shall provide to the self-regulatory organization that filed the proposed rule change—

"(I) notice of the grounds for disapproval under consideration; and

"(II) opportunity for hearing, to be concluded not later than 180 days of the date of publication of notice of the filing of the proposed rule change.

"(ii) ORDER OF APPROVAL OR DISAPPROVAL.—

"(I) IN GENERAL.—Except as provided in subclause (II), not later than 180 days after the date of publication under paragraph (1), the Commission shall issue an order approving or disapproving the proposed rule change.

"(II) EXTENSION OF TIME PERIOD.—The Commission may extend the period for issuance under clause (I) by not more than 60 days, if—

"(aa) the Commission determines that a longer period is appropriate and publishes the reasons for such determination; or

"(bb) the self-regulatory organization that filed the proposed rule change consents to the longer period.

"(C) STANDARDS FOR APPROVAL AND DISAPPROVAL.—

"(i) APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent

with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.

"(ii) DISAPPROVAL.—The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make a finding described in clause (i).

"(iii) TIME FOR APPROVAL.—The Commission may not approve a proposed rule change earlier than 30 days after the date of publication under paragraph (1), unless the Commission finds good cause for so doing and publishes the reason for the finding.

"(D) RESULT OF FAILURE TO INSTITUTE OR CONCLUDE PROCEEDINGS.—A proposed rule change shall be deemed to have been approved by the Commission, if—

"(i) the Commission does not approve the proposed rule change or begin proceedings under subparagraph (B) within the period described in subparagraph (A); or

"(ii) the Commission does not issue an order approving or disapproving the proposed rule change under subparagraph (B) within the period described in subparagraph (B)(ii).

"(E) PUBLICATION DATE BASED ON WEBSITE PUBLISHING.—For purposes of this paragraph, if, after filing a proposed rule change with the Commission pursuant to paragraph (1), a self-regulatory organization publishes a notice of the filing of such proposed rule change, together with the substantive terms of such proposed rule change, on a publicly accessible website, the date of publication of notice of the filing of such proposed rule change shall be deemed to be the date on which such website publication is made.".

(b) CLARIFICATION OF FILING DATE.—

(1) RULE OF CONSTRUCTION.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

"(10) RULE OF CONSTRUCTION RELATING TO FILING DATE OF PROPOSED RULE CHANGES.—

"(A) IN GENERAL.—For purposes of this subsection, the date of filing of a proposed rule change shall be deemed the date on which the Commission receives the proposed rule change.

"(B) EXCEPTION.—A proposed rule change has not been received by the Commission for purposes of subparagraph (A) if, not later than 7 days after the date of receipt by the Commission, the Commission notifies the self-regulatory organization that such proposed rule change does not comply with the rules of the Commission relating to the required form of a proposed rule change.".

(2) PUBLICATION.—Section 19(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(1)) is amended by striking "upon" and inserting "as soon as practicable after the date of".

(c) EFFECTIVE DATE OF PROPOSED RULES.—Section 19(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(3)) is amended—

(1) in subparagraph (A)—

(A) by striking "may take effect" and inserting "shall take effect"; and

(B) by inserting " on any person, whether or not the person is a member of the self-regu-

latory organization'' after ''charge imposed by the self-regulatory organization''; and

(2) in subparagraph (C)—

(A) by amending the second sentence to read as follows: ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1), the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.'';

(B) by inserting after the second sentence the following: ''If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) to determine whether the proposed rule should be approved or disapproved.''; and

(C) in the third sentence, by striking ''the preceding sentence'' and inserting ''this subparagraph''.

(d) CONFORMING CHANGE.—Section 19(b)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)(4)(D)) is amended to read as follows:

"(D)(i) The Commission shall order the temporary suspension of any change in the rules of a clearing agency made by a proposed rule change that has taken effect under paragraph (3), if the appropriate regulatory agency for the clearing agency notifies the Commission not later than 30 days after the date on which the proposed rule change was filed of—

"(I) the determination by the appropriate regulatory agency that the rules of such clearing agency, as so changed, may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible; and

"(II) the reasons for the determination described in subclause (I).

"(ii) If the Commission takes action under clause (i), the Commission shall institute proceedings under paragraph (2)(B) to determine if the proposed rule change should be approved or disapproved.".

SEC. 916. STUDY REGARDING FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS.

(a) IN GENERAL.—The Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as that term is defined under section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5), that are registered under section 8 of that Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 917. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of unsustainable past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers; and

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 918. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT COMPANY SHARES.

Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following:

''(h) TIMING OF DISCLOSURE.—Notwithstanding any other provision of this Act or the Securities Act of 1933, the Commission may promulgate rules designating documents or information that shall be provided to a purchaser of securities issued by a registered investment company.''.

Subtitle B—Increasing Regulatory Enforcement and Remedies

SEC. 921. AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 913, is amended by adding at the end the following:

"(l) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—Not later than 180 days after the date of enactment of this subsection, the Commission shall conduct a rulemaking to prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between them that occurs after the effective date of the regulations and that arises under the securities laws or the rules of a self-regulatory organization, if the Commission finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.".

(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following:

"(f) AUTHORITY TO RESTRICT MANDATORY PREDISPUTE ARBITRATION.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall conduct rulemaking to prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any dispute between

them that occurs after the effective date of the regulations and that arises under the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or the rules of a self-regulatory organization, if the Commission finds that such prohibition or imposition of conditions, or limitations are in the public interest and for the protection of investors.

''(2) EFFECTIVE DATE.—The rules required to be promulgated by the Commission under paragraph (1) shall become effective not later than 270 days after the date of enactment of this subsection.''.

SEC. 922. WHISTLEBLOWER PROTECTION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 21E the following:

''SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

''(a) DEFINITIONS.—In this section the following definition shall apply:

''(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term 'covered judicial or administrative action' means any judicial or administrative action brought by the Commission under the securities

laws that results in monetary sanctions exceeding $1,000,000.

"(2) FUND.—The term 'Fund' means the Securities and Exchange Commission Investor Protection Fund.

"(3) ORIGINAL INFORMATION.—The term 'original information' means information that—

"(A) is based on the direct and independent knowledge or analysis of a whistleblower;

"(B) is not known to the Commission from any other source, unless the whistleblower is the original source of the information; and

"(C) is not exclusively based on an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media.

"(4) MONETARY SANCTIONS.—The term 'monetary sanctions', when used with respect to any judicial or administrative action, means—

"(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

"(B) any monies deposited into a disgorgement fund or other fund pursuant to

section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.

''(5) RELATED ACTION.—The term 'related action', when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subclauses (I) through (IV) of subsection (h)(2)(D)(i) that is based upon the original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

''(6) WHISTLEBLOWER.—The term 'whistleblower' means any individual, or 2 or more individuals acting jointly, that provides information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.

''(b) AWARDS.—

''(1) IN GENERAL.—In any covered judicial or administrative action, the Commission, under regulations prescribed by the Commission and subject to subsection (c), may pay an award or awards to 1 or more whistleblowers who voluntarily provided origi-

nal information to the Commission that led to the successful enforcement of the covered judicial or administrative action in an amount—

"(A) not less than an amount equal to 10 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions; and

"(B) not exceeding an amount equal to 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action or related actions.

"(2) PAYMENT OF AWARDS.—Any amount paid under paragraph (1) shall be paid from the Fund.

"(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

"(1) DETERMINATION OF AMOUNT OF AWARD.—

"(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the sole discretion of the Commission.

"(B) CRITERIA.—In determining the amount of an award made under subsection (b), the Commission shall take into account—

"(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

"(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

"(iii) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

"(iv) such additional relevant factors as the Commission may establish by rule or regulation.

"(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

"(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to the Commission, a member, officer, or employee of—

"(i) an appropriate regulatory agency;

"(ii) the Department of Justice;

"(iii) a self-regulatory organization; or

"(iv) the Public Company Accounting Oversight Board;

"(B) to any whisteblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or

"(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

"(d) REPRESENTATION.—

"(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

"(2) REQUIRED REPRESENTATION.—

"(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

"(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower or the counsel for the whistleblower shall disclose

the identity of the whistleblower and provide such other information as the Commission may require.

''(e) NO CONTRACT NECESSARY.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (b), unless otherwise required by the Commission by rule or regulation.

''(f) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the sole discretion of the Commission, and any such determination may be appealed to the appropriate district court of the United States not more than 30 days after the determination is issued by the Commission.

''(g) INVESTOR PROTECTION FUND.—

''(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a fund to be known as the 'Securities and Exchange Commission Investor Protection Fund'.

''(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for—

''(A) paying awards to whistleblowers as provided in subsection (b); and

"(B) funding the activities of the Inspector General of the Commission under section 4(i).

"(3) DEPOSITS AND CREDITS.—There shall be deposited into or credited to the Fund—

"(A) any monetary sanction collected by the Commission in any judicial or administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) or otherwise distributed to victims of a violation of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $200,000,000;

"(B) any monetary sanction added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) that is not distributed to the victims for whom the disgorgement fund was established, unless the balance of the disgorgement fund at the time the determination is made not to distribute the monetary

sanction to such victims exceeds $100,000,000; and

"(C) all income from investments made under paragraph (4).

"(4) INVESTMENTS.—

"(A) AMOUNTS IN FUND MAY BE INVESTED.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the discretion of the Commission, required to meet the current needs of the Fund.

"(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Fund as determined by the Commission on the record.

"(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

"(5) REPORTS TO CONGRESS.—Not later than October 30 of each fiscal year beginning after the date of enactment of this subsection, the Commis-

sion shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

"(A) the whistleblower award program, established under this section, including—

"(i) a description of the number of awards granted; and

"(ii) the types of cases in which awards were granted during the preceding fiscal year;

"(B) the balance of the Fund at the beginning of the preceding fiscal year;

"(C) the amounts deposited into or credited to the Fund during the preceding fiscal year;

"(D) the amount of earnings on investments made under paragraph (4) during the preceding fiscal year;

"(E) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (b);

"(F) the balance of the Fund at the end of the preceding fiscal year; and

"(G) a complete set of audited financial statements, including—

"(i) a balance sheet;

"(ii) income statement; and

"(iii) cash flow analysis.

"(h) PROTECTION OF WHISTLEBLOWERS.—

"(1) PROHIBITION AGAINST RETALIATION.—

"(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower—

"(i) in providing information to the Commission in accordance with subsection (a); or

"(ii) in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

"(B) ENFORCEMENT.—

"(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this sub-

section in the appropriate district court of the United States for the relief provided in subparagraph (C).

"(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

"(iii) STATUTE OF LIMITATIONS.—

"(I) IN GENERAL.—An action under this subsection may not be brought—

"(aa) more than 6 years after the date on which the violation of subparagraph (A) occurred;

"(bb) or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation of subparagraph (A).

"(II) REQUIRED ACTION WITHIN 10 YEARS.—Notwithstanding sub-

clause (I), an action under this subsection may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

"(C) RELIEF.—Relief for an individual prevailing in an action brought under subparagraph (B) shall include—

"(i) reinstatement with the same seniority status that the individual would have had, but for the discrimination;

"(ii) 2 times the amount of back pay otherwise owed to the individual, with interest; and

"(iii) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys' fees.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Unless and until required to be disclosed to a defendant or respondent in connection with a proceeding instituted by the Commission or any entity described in subparagraph (D), all information

provided to the Commission by a whistleblower—

"(i) in any proceeding in any Federal or State court or administrative agency—

"(I) shall be confidential and privileged as an evidentiary matter; and

"(II) shall not be subject to civil discovery or other legal process; and

"(ii) shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) or under any proceeding under that section.

"(B) EXEMPTED STATUTE.—For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(C) RULE OF CONSTRUCTION.—Nothing in this section is intended to limit, or shall be construed to limit, the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential

witnesses or defendants in the course of an ongoing criminal investigation.

"(D) AVAILABILITY TO GOVERNMENT AGENCIES.—

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

"(I) the Attorney General of the United States;

"(II) an appropriate regulatory authority;

"(III) a self-regulatory organization;

"(IV) a State attorney general in connection with any criminal investigation;

"(V) any appropriate State regulatory authority;

"(VI) the Public Company Accounting Oversight Board;

"(VII) a foreign securities authority; and

"(VIII) a foreign law enforcement authority.

"(ii) CONFIDENTIALITY.—

"(I) IN GENERAL.—Each of the entities described in subclauses (I) through (VI) of clause (i) shall maintain such information as confidential and privileged, in accordance with the requirements established under subparagraph (A).

"(II) FOREIGN AUTHORITIES.—Each of the entities described in subclauses (VII) and (VIII) of clause (i) shall maintain such information in accordance with such assurances of confidentiality as the Commission determines appropriate.

"(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any

Federal or State law, or under any collective bargaining agreement.

''(i) PROVISION OF FALSE INFORMATION.—A whistleblower shall not be entitled to an award under this section, and shall be subject to prosecution under section 1001 of title 18, United States Code, if the whistleblower—

''(1) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or

''(2) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

''(j) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section consistent with the purposes of this section.''.

SEC. 923. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)) is amended by inserting ''and section

21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002''.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)) is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002''.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)) is amended by inserting ''and section 21F of the Securities Exchange Act of 1934'' after ''the Sarbanes-Oxley Act of 2002''.

(b) SECURITIES EXCHANGE ACT.—

(1) SECTION 21.—Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)) is amended by inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002''.

(2) SECTION 21A.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1) is amended—

(A) in subsection (d)(1) by—

(i) striking ''(subject to subsection (e))''; and

(ii) inserting ''and section 21F of this title'' after ''the Sarbanes-Oxley Act of 2002'';

(B) by striking subsection (e); and

(C) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 924. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTION.

(a) IMPLEMENTING RULES.—The Securities and Exchange Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

(b) ORIGINAL INFORMATION.—Information provided to the Commission by a whistleblower in accordance with the regulations referenced in subsection (a) shall not lose the status of original information (as defined in section 21F(i)(1) of the Securities Exchange Act of 1934, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, provided the information was—

(1) provided by the whistleblower after the date of enactment of this subtitle; or

(2) related to a violation for which an award under section 21F of the Securities Exchange Act of 1934, as added by this subtitle, could have been paid at the time the information was provided by the whistleblower.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this subtitle, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based, occurred prior to the date of enactment of this subtitle.

SEC. 925. COLLATERAL BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 15.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking ''12 months, or bar such person from being associated with a broker or dealer,'' and inserting ''12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(2) SECTION 15B.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–

4(c)(4)) is amended by striking ''twelve months or bar any such person from being associated with a municipal securities dealer,'' and inserting ''12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

(3) SECTION 17A.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking ''twelve months or bar any such person from being associated with the transfer agent,'' and inserting ''12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating organization,''.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking ''twelve months or bar any such person from being associated with an investment adviser,'' and inserting ''12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,''.

SEC. 926. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended to read as follows:

"SEC. 15. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS.

"(a) CONTROLLING PERSONS.—Any person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with 1 or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to which such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

"(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subsections (b) or (d) of section 20, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under

this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(b) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended to read as follows:

''SEC. 48. LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS; PREVENTING COMPLIANCE WITH ACT.

''(a) CONTROLLING PERSONS.—It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this Act or any rule, regulation, or order thereunder.

''(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subsections (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

"(c) PREVENTING COMPLIANCE WITH ACT.—It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this Act or any rule, regulation, or order thereunder.".

SEC. 927. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by adding at the end the following:

"(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly aids, abets, counsels, commands, induces, or procures another person to commit a violation of a provision of this Act, or of a rule, regulation, or order issued under this Act, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.".

SEC. 928. RESTORING THE AUTHORITY OF STATE REGULATORS OVER REGULATION D OFFERINGS.

Section 18(b)(4) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

(1) in subparagraph (B), by adding ''or'' at the end;

(2) in subparagraph (C), by striking the ''or'' at the end; and

(3) by striking subparagraph (D).

Subtitle C—Improvements to the Regulation of Credit Rating Agencies

SEC. 931. ENHANCED REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (c)—

(A) in paragraph (2), in the second sentence, by inserting ''any other provision of this section, or'' after ''Notwithstanding''; and

(B) by adding at the end the following:

''(3) INTERNAL CONTROLS OVER PROCESSES FOR DETERMINING CREDIT RATINGS.—

''(A) IN GENERAL.—Each nationally recognized statistical rating organization shall establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, pro-

cedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule.

"(B) ATTESTATION REQUIREMENT.—The Commission shall prescribe rules requiring each nationally recognized statistical organization to submit to the Commission an annual internal controls report, which shall contain—

"(i) a description of the responsibility of the management of the nationally recognized statistical rating organization in establishing and maintaining an effective internal control structure under subparagraph (A);

"(ii) an assessment of the effectiveness of the internal control structure of the national recognized statistical rating organization; and

"(iii) the attestation of the chief executive officer, or equivalent individual, of the nationally recognized statistical rating organization.";

(2) in subsection (d)—

(A) in the subsection heading, by inserting ''FINE,'' after ''CENSURE,'';

(B) by inserting ''fine,'' after ''censure,'' each place that term appears;

(C) in paragraph (2), by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and adjusting the clause margins accordingly;

(D) by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and adjusting the subparagraph margins accordingly;

(E) in the matter preceding subparagraph (A), as so redesignated, by striking ''The Commission'' and inserting the following:

''(1) IN GENERAL.—The Commission'';

(F) in subparagraph (D), as so redesignated, by striking ''or'' at the end;

(G) in subparagraph (E), as so redesignated, by striking the period at the end and inserting a semicolon; and

(H) by adding at the end the following:

''(F) has failed reasonably to supervise, with a view to preventing a violation of the securities laws, an individual who commits such a

violation, if the individual is subject to the supervision of that person.''.

''(2) SUSPENSION OR REVOCATION FOR PARTICULAR CLASS OF SECURITIES.—

''(A) IN GENERAL.—The Commission may temporarily suspend or permanently revoke the registration of a nationally recognized statistical rating organization with respect to a particular class or subclass of securities, if the Commission finds, on the record after notice and opportunity for hearing, that the nationally recognized statistical rating organization does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.

''(B) CONSIDERATIONS.—In making any determination under subparagraph (A), the Commission shall consider—

''(i) whether the nationally recognized statistical rating organization has failed over a sustained period of time, as determined by the Commission, to produce accurate ratings for that class or subclass of securities;

"(ii) whether the performance of the nationally recognized statistical rating organization has been significantly worse than the performance of other nationally recognized statistical rating organizations during the same time period; and

"(iii) such other factors as the Commission may determine.";

(3) in subsection (h), by adding at the end the following:

"(3) SEPARATION OF RATINGS FROM SALES AND MARKETING.—The Commission shall issue rules to prevent the sales and marketing considerations of a nationally recognized statistical rating organization from influencing the production of ratings by the nationally recognized statistical rating organization. Such rules shall provide for exceptions for small nationally recognized statistical rating organizations with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate.";

(4) in subsection (j)—

(A) by striking "Each" and inserting the following:

1 "(1) IN GENERAL.—Each"; and
2 (B) by adding at the end the following:
3 "(2) LIMITATIONS.—
4 "(A) IN GENERAL.—Except as provided in
5 subparagraph (B), an individual designated
6 under paragraph (1) may not, while serving in
7 the designated capacity—
8 "(i) perform credit ratings;
9 "(ii) participate in the development of
10 ratings methodologies or models;
11 "(iii) perform marketing or sales
12 functions; or
13 "(iv) participate in establishing com-
14 pensation levels, other than for employees
15 working for that individual.
16 "(B) EXCEPTION.—The Commission may
17 exempt a small nationally recognized statistical
18 rating organization from the limitations under
19 this paragraph, if the Commission finds that
20 compliance with such limitations would impose
21 an unreasonable burden on the nationally recog-
22 nized statistical rating organization.
23 "(3) OTHER DUTIES.—Each individual des-
24 ignated under paragraph (1) shall establish proce-
25 dures for the receipt, retention, and treatment of—

"(A) complaints regarding credit ratings, models, methodologies, and compliance with the securities laws and the policies and procedures developed under this section; and

"(B) confidential, anonymous complaints by employees or users of credit ratings.

"(4) ANNUAL REPORTS REQUIRED.—

"(A) ANNUAL REPORTS REQUIRED.—Each individual designated under paragraph (1) shall submit to the nationally recognized statistical rating organization an annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization that includes—

"(i) a description of any material changes to the code of ethics and conflict of interest policies of the nationally recognized statistical rating organization; and

"(ii) a certification that the report is accurate and complete.

"(B) SUBMISSION OF REPORTS TO THE COMMISSION.—Each nationally recognized statistical rating organization shall file the reports

required under subparagraph (A) together with the financial report that is required to be submitted to the Commission under this section.

"(C) REGULATIONS.—The Commission shall issue rules prescribing matters that should be addressed in the reports required under this paragraph.";

(5) in subsection (k)—

(A) by striking ", on a confidential basis,";

(B) by striking "Each nationally" and inserting the following:

"(1) IN GENERAL.—Each nationally"; and

(C) by adding at the end the following:

"(2) EXCEPTION.—The Commission may treat as confidential any information contained in a financial statement furnished to the Commission under paragraph (1), if the Commission determines that the publication of the financial statement may have a harmful effect on a nationally recognized statistical rating organization."; and

(6) by striking subsection (p) and inserting the following:

"(p) REGULATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—

"(1) ESTABLISHMENT OF OFFICE OF CREDIT RATINGS.—

"(A) OFFICE ESTABLISHED.—The Commission shall establish within the Commission an Office of Credit Ratings (referred to in this subsection as the 'Office') to administer the rules of the Commission—

"(i) with respect to the practices of nationally recognized statistical rating organizations in determining ratings, for the protection of users of credit ratings and in the public interest;

"(ii) to promote accuracy in credit ratings issued by nationally recognized statistical rating organizations; and

"(iii) to ensure that such ratings are not unduly influenced by conflicts of interest.

"(B) DIRECTOR OF THE OFFICE.—The head of the Office shall be the Director, who shall report to the Chairman.

"(2) STAFFING.—The Office established under this subsection shall be staffed sufficiently to carry out fully the requirements of this section. The staff shall include persons with knowledge of and exper-

tise in corporate, municipal, and structured debt finance.

"(3) COMMISSION EXAMINATIONS.—

"(A) ANNUAL EXAMINATIONS REQUIRED.—The Office shall conduct an examination of each nationally recognized statistical rating organization at least annually.

"(B) CONDUCT OF EXAMINATIONS.—Each examination under subparagraph (A) shall include a review of—

"(i) the policies, procedures, and rating methodologies of the nationally recognized statistical rating organization, and whether the nationally recognized statistical rating organization conducts business in accordance with such policies, procedures, and rating methodologies;

"(ii) the management of conflicts of interest by the nationally recognized statistical rating organization;

"(iii) implementation of ethics policies by the nationally recognized statistical rating organization;

"(iv) the internal supervisory controls of the nationally recognized statistical rating organization;

"(v) the governance of the nationally recognized statistical rating organization;

"(vi) the activities of the individual designated by the nationally recognized statistical rating organization under subsection (j)(1);

"(vii) the processing of complaints by the nationally recognized statistical rating organization; and

"(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization.

"(C) INSPECTION REPORTS.—The Commission shall make available to the public a report summarizing the essential findings of each examination under subparagraph (A) that is in an easily understandable format, as deemed appropriate by the Commission.

"(4) RULEMAKING AUTHORITY.—The Commission shall—

"(A) establish, by rule, fines, and other penalties applicable to any nationally recognized statistical rating organization that violates the requirements of this subsection and the rules thereunder; and

"(B) issue such rules as may be necessary to carry out this subsection.

"(q) TRANSPARENCY OF RATINGS PERFORMANCE.—

"(1) RULEMAKING REQUIRED.—The Commission shall, by rule, require that each nationally recognized statistical rating organization publicly disclose information on the initial credit ratings published by the nationally recognized statistical rating organization for each type of obligor, security, and money market instrument and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different nationally recognized statistical rating organizations.

"(2) CONTENT.—The rules of the Commission under this subsection shall require, at a minimum, disclosures that—

"(A) are comparable among nationally recognized statistical rating organizations, to allow

users of credit ratings to compare the performance of credit ratings across nationally recognized statistical rating organizations;

"(B) are clear and informative for investors with varying levels of financial sophistication;

"(C) include performance information over a range of years and for a variety of types of credit ratings, in a format determined by the Commission;

"(D) are published and made freely available by the nationally recognized statistical rating organization, on an easily accessible portion of its website, and in writing, when requested; and

"(E) are appropriate to the business model of a nationally recognized statistical rating organization.

"(r) CREDIT RATINGS METHODOLOGIES.—The Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative inputs and models, used by nationally recognized statistical rating organizations that require each nationally recognized statistical rating organization—

"(1) to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative inputs and models, that are—

"(A) approved by the board of the nationally recognized statistical rating organization, a body performing a function similar to that of a board, or the senior officer of the nationally recognized statistical rating organization; and

"(B) in accordance with the policies and procedures of the nationally recognized statistical rating organization for the development and modification of credit rating procedures and methodologies;

"(2) to ensure that when material changes to credit rating procedures and methodologies, including changes to qualitative and quantitative inputs and models, are made, that—

"(A) the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply;

"(B) to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the nationally recog-

nized statistical rating organization within a reasonable time period determined by the Commission, by rule; and

"(C) the nationally recognized statistical rating organization publically discloses the reason for the change; and

"(3) to notify users of credit ratings—

"(A) of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating;

"(B) when a material change is made to a procedure or methodology, including to a qualitative model or quantitative inputs;

"(C) when a significant error is identified in a procedure or methodology that may result in credit rating actions; and

"(D) of the likelihood of the change resulting in current credit ratings being subject to a change in rating.

"(s) TRANSPARENCY OF CREDIT RATING METHODOLOGIES AND INFORMATION REVIEWED.—

"(1) FORM FOR DISCLOSURES.—The Commission shall require by rule, a nationally recognized statistical rating organization to prescribe a form to

include with the publication of each credit rating that discloses—

"(A) information relating to—

"(i) the assumptions underlying credit rating procedures and methodologies;

"(ii) the data that was relied on to determine the credit rating; and

"(iii) if applicable, how the nationally recognized statistical rating organization used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and

"(B) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the nationally recognized statistical rating organization.

"(2) FORMAT.—The form developed under paragraph (1) shall—

"(A) be easy to use and helpful for users of credit ratings to understand the information contained in the report; and

"(B) require the nationally recognized statistical rating organization to provide the qualitative and quantitative content described in

1 paragraph (3)(B) in a manner that is directly
2 comparable across types of securities.
3 ''(3) CONTENT OF FORM.—
4 ''(A) QUALITATIVE CONTENT.—Each na-
5 tionally recognized statistical rating organiza-
6 tion shall disclose on the form developed under
7 paragraph (1)—
8 ''(i) the credit ratings produced by the
9 nationally recognized statistical rating or-
10 ganization;
11 ''(ii) the main assumptions used in
12 constructing procedures and methodolo-
13 gies, including qualitative methodologies
14 and quantitative inputs and assumptions
15 about the correlation of defaults across ob-
16 ligors used in rating structured products;
17 ''(iii) the potential limitations of the
18 credit ratings, and the types of risks ex-
19 cluded from the credit ratings that the na-
20 tionally recognized statistical rating orga-
21 nization does not comment on, including li-
22 quidity, market, and other risks;
23 ''(iv) information on the uncertainty
24 of the credit rating, including—

"(I) information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

"(II) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including—

"(aa) any limits on the scope of historical data; and

"(bb) any limits in accessibility to certain documents or other types of information that would have better informed the credit rating;

"(v) whether and to what extent third party due diligence services have been used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

"(vi) a description of data about any obligor, issuer, security, or money market

instrument that were relied upon for the purpose of determining the credit rating;

"(vii) a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or a money market instrument in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar issuances;

"(viii) information relating to conflicts of interest of the nationally recognized statistical rating organization; and

"(ix) such additional information as the Commission may require.

"(B) QUANTITATIVE CONTENT.—Each nationally recognized statistical rating organization shall disclose on the form developed under this subsection—

"(i) an explanation or measure of the potential volatility of the credit rating, including—

"(I) any factors that might lead to a change in the credit ratings; and

"(II) the extent of the change that a user can expect under different market conditions;

"(ii) information on the content of the rating, including—

"(I) the historical performance of the rating, or the expected probability of default; and

"(II) the historical performance of the rating, or the loss to the user in the event of default;

"(iii) information on the sensitivity of the rating to assumptions made by the nationally recognized statistical rating organization; and

"(iv) such additional information as may be required by the Commission.

"(4) DUE DILIGENCE SERVICES.—

"(A) PUBLIC DISCLOSURE.—The issuer or underwriter of any asset-backed security shall make publicly available any third-party due diligence report obtained by the issuer or underwriter.

"(B) CERTIFICATION REQUIRED.—In any case in which third-party due diligence services

are employed by a nationally recognized statistical rating organization, an issuer, or an underwriter, the person providing the due diligence services shall provide to any nationally recognized statistical rating organization that produces a rating to which such services relate, written certification, as provided in subparagraph (C).

"(C) FORMAT AND CONTENT.—Each nationally recognized statistical rating organization shall establish the appropriate format and content for the written certifications required under subparagraph (B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for the nationally recognized statistical rating organization to provide an accurate rating.

"(D) DISCLOSURE OF CERTIFICATION.—The Commission shall adopt rules requiring a nationally recognized statistical rating organization, at the time at which the nationally recognized statistical rating organization produces a rating, to disclose the certification described in subparagraph (B) to the public in a manner

that allows the public to determine the adequacy and level of due diligence services provided by a third party.''.

SEC. 932. STATE OF MIND IN PRIVATE ACTIONS.

Section 21D(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4(b)(2)) is amended—

(1) by striking ''In any'' and inserting the following:

''(A) IN GENERAL.—Except as provided in subparagraph (B), in any''; and

(2) by adding at the end the following:

''(B) EXCEPTION.—In the case of an action for money damages brought against a nationally recognized statistical rating organization under this title, it shall be sufficient, for purposes of pleading any required state of mind in relation to such action, that the complaint state with particularity facts giving rise to a strong inference that the nationally recognized statistical rating organization knowingly or recklessly failed—

''(i) to conduct a reasonable investigation of the rated security with respect to the factual elements relied upon by its own methodology for evaluating credit risk; or

"(ii) to obtain reasonable verification of such factual elements (which verification may be based on a sampling technique that does not amount to an audit) from other sources that it considered to be competent and that were independent of the issuer and underwriter.".

SEC. 933. REFERRING TIPS TO LAW ENFORCEMENT OR REGULATORY AUTHORITIES.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(t) DUTY TO REPORT TIPS ALLEGING VIOLATIONS.—

"(1) DUTY TO REPORT.—Each nationally recognized statistical rating organization shall refer to the appropriate law enforcement or regulatory authorities any information that the nationally recognized statistical rating organization receives and finds credible that alleges that an issuer of securities rated by the nationally recognized statistical rating organization has committed or is committing a violation of law that has not been adjudicated by a Federal or State court.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) may be construed to require a nationally recognized statistical rating organization to verify the accuracy of the information described in paragraph (1).".

SEC. 934. CONSIDERATION OF INFORMATION FROM SOURCES OTHER THAN THE ISSUER IN RATING DECISIONS.

Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this subtitle, is amended by adding at the end the following:

"(u) INFORMATION FROM SOURCES OTHER THAN THE ISSUER.—In producing a credit rating, a nationally recognized statistical rating organization shall consider information about an issuer that the nationally recognized statistical rating organization has, or receives from a source other than the issuer, that the nationally recognized statistical rating organization finds credible and potentially significant to a rating decision.".

SEC. 935. QUALIFICATION STANDARDS FOR CREDIT RATING ANALYSTS.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission (referred to in this subtitle as the "Commission"), or a national securities association designated by the Commis-

sion, shall issue rules that are reasonably designed to ensure that any person employed by a nationally recognized statistical rating organization to perform credit ratings—

(1) meets standards of training, experience, and competence necessary to produce accurate ratings; and

(2) is tested for knowledge of the credit rating process.

SEC. 936. TIMING OF REGULATIONS.

The Securities and Exchange Commission shall issue final regulations, as required by this title and the amendments made by this subtitle, not later than 1 year after the date of enactment of this Act.

SEC. 937. STUDIES AND REPORTS.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON REQUIRED USES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION RATINGS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study of the scope of provisions of Federal, State, and local law that require the use of ratings issued by nationally recognized statistical rating organizations (in this section referred to as the ''ratings requirements'').

(2) SUBJECTS FOR EVALUATION; PROCESS OF EVALUATION.—

(A) SUBJECTS FOR EVALUATION.—In conducting the study under paragraph (1), the Comptroller General of the United States shall evaluate—

(i) the appropriateness of and necessity for ratings requirements;

(ii) which ratings requirements, if any, could be removed with minimal disruption to the financial markets;

(iii) the potential impact on the financial markets and on investors if the ratings requirements identified under clause (ii) were rescinded; and

(iv) whether the financial markets and investors would benefit from the rescission of such ratings requirements.

(B) PROCESS OF EVALUATION.—In conducting the study under paragraph (1), the Comptroller General of the United States shall research and take into consideration the views of—

(i) the Federal financial regulatory agencies;

(ii) hedge funds;

(iii) banks;

(iv) brokerage firms;

(v) pension funds; and

(vi) all other interested parties.

(3) REPORT AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1), including recommendations on—

(A) which ratings requirements, if any, could be removed with minimal disruption to the markets; and

(B) whether the financial markets and investors would benefit from the rescission of the ratings requirements identified under subparagraph (A).

(b) SECURITIES AND EXCHANGE COMMISSION STUDY ON STRENGTHENING CREDIT RATING AGENCY INDEPENDENCE.—

(1) STUDY.—The Commission shall conduct a study of—

(A) the independence of nationally recognized statistical rating organizations; and

(B) how the independence of nationally recognized statistical rating organizations impacts the ratings issued by the nationally organized statistical rating organizations.

(2) SUBJECTS FOR EVALUATION.—In conducting the study under paragraph (1), the Commission shall evaluate—

(A) the management of conflicts of interest raised by a nationally recognized statistical rating organization providing other services, including risk management advisory services, ancillary assistance, or consulting services;

(B) the potential impact of rules prohibiting a nationally recognized statistical rating organization that provided a rating to an issuer from providing other services to the issuer; and

(C) any other issue relating to nationally recognized statistical organizations, as the Chairman determines is appropriate.

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Chairman of the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and

the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1), including recommendations, if any, for improving the quality of ratings issued by nationally recognized statistical rating organizations.

(c) GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON ALTERNATIVE BUSINESS MODELS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on alternative means for compensating nationally recognized statistical rating organizations in order to create incentives for nationally recognized statistical rating organizations to provide more accurate credit ratings, including any statutory changes that would be required to facilitate the use of an alternative means of compensation.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1), including recommendations, if any, for providing incentives to

credit rating agencies to provide more accurate credit ratings.

(d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE CREATION OF AN INDEPENDENT PROFESSIONAL ANALYST ORGANIZATION.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the feasability and merits of creating an independent professional organization for rating analysts employed by nationally recognized statistical rating organizations that would be responsible for—

(A) establishing independent standards for governing the profession of rating analysts;

(B) establishing a code of ethical conduct; and

(C) overseeing the profession of rating analysts.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the results of the study conducted under paragraph (1).

(e) GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF EFFECTIVENESS OF RULES OF THE COMMISSION.—

(1) STUDY.—The Comptroller General of the United States shall carry out a study of the extent to which the rules of the Commission have carried out this subtitle, and the amendments made by this subtitle.

(2) REPORT.—Not later than 30 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and the Commission, a report containing the results of the study required under paragraph (1).

(f) GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON THE PERFORMANCE OF RATINGS FOR THE PURPOSES OF REGULATORY USE.—

(1) STUDY.—The Comptroller General of the United States shall carry out a study of a representative sample of the credit ratings issued by each nationally recognized statistical rating organization to assess—

(A) the predictive performance of the initial credit ratings in each such sample; and

(B) the predictive performance of any subsequent credit rating described in subparagraph (A) that is issued by the nationally recognized statistical rating organization.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(A) the results of the study required under paragraph (1); and

(B) a score card evaluating the predictive performance of the credit ratings of each nationally recognized statistical rating organization.

Subtitle D—Improvements to the Asset-Backed Securitization Process

SEC. 941. REGULATION OF CREDIT RISK RETENTION.

(a) DEFINITION OF ASSET-BACKED SECURITY.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(65) ASSET-BACKED SECURITY.—The term 'asset-backed security'—

"(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

"(i) a collateralized mortgage obligation;

"(ii) a collateralized debt obligation;

"(iii) a collateralized bond obligation;

"(iv) a collateralized debt obligation of asset backed-securities;

"(v) a collateralized debt obligation of collateralized debt obligations; and

"(vi) a security that the Commission, by rule, determines to be an asset-backed security; and

"(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the

finance subsidiary are held by an entity that is not controlled by the parent company.''.

(b) CREDIT RISK RETENTION.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15F, as added by this Act, the following:

"SEC. 15G. CREDIT RISK RETENTION.

''(a) DEFINITIONS.—In this section—

''(1) the term 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, FIRA, and the Federal Deposit Insurance Corporation;

''(2) the term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

''(3) the term 'securitizer' means—

''(A) an issuer of an asset-backed security; or

''(B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer; and

''(4) the term 'originator' means a person who sells an asset to a securitizer.

"(b) IN GENERAL.—Not later than 270 day after the date of enactment of this section, the Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a material portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

"(c) STANDARDS FOR REGULATIONS.—The regulations prescribed under subsection (b) shall—

"(1) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset;

"(2) require a securitizer to retain not less than 10 percent of the credit risk for any asset that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer;

"(3) specify—

"(A) the permissible forms of risk retention for purposes of this section; and

"(B) the minimum duration of the risk retention required under this section;

"(4) apply, regardless of whether the securitizer is an insured depository institution; and

"(5) provide for—

"(A) a total or partial exemption for the securitization of an asset issued or guaranteed by the United States, an agency of the United States, or a Government-sponsored enterprise, as the Federal banking agencies and the Commission jointly determine appropriate;

"(B) a total or partial exemption of any other securitizations, as may be appropriate in the public interest or for the protection of investors; and

"(C) the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator, as the Federal banking agencies and the Commission jointly determine appropriate.

"(d) EXEMPTIONS, EXCEPTIONS, AND ADJUSTMENTS.—

"(1) IN GENERAL.—The Federal banking agencies may jointly adopt or issue exemptions, exceptions, or adjustments to the rules issued under this section, including exemptions, exceptions, or adjustments for classes of institutions or assets relating to

the risk retention requirement and the prohibition on hedging under subsection (c)(2).

"(2) APPLICABLE STANDARDS.—Any exemption, exception, or adjustment adopted or issued by the Federal banking agencies under this paragraph shall—

"(A) help ensure high quality underwriting standards for the securitizers and originators of assets; and

"(B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

"(e) ENFORCEMENT.—The regulations issued under this section shall be enforced by—

"(1) the appropriate Federal banking agency, with respect to any securitizer that is an insured depository institution; and

"(2) the Commission, with respect to any securitizer that is not an insured depository institution.

"(f) AUTHORITY OF COMMISSION.—The authority of the Commission under this section shall be in addition to

the authority of the Commission to otherwise enforce the securities laws.''.

SEC. 942. PERIODIC AND OTHER REPORTING UNDER THE SECURITIES EXCHANGE ACT OF 1934 FOR ASSET-BACKED SECURITIES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) in subsection (d)—

(A) by striking ''(d) Each'' and inserting the following:

''(d) SUPPLEMENTARY AND PERIODIC INFORMATION.—

''(1) IN GENERAL.—Each'';

(B) in the third sentence, by inserting after ''securities of each class'' the following: '', other any class of asset-backed securities,'';

(C) by adding at the end the following:

''(2) ASSET-BACKED SECURITIES.—

''(A) SUSPENSION OF DUTY TO FILE.—The Commission may, by rule or regulation, provide for the suspension or termination of the duty to file under this subsection for any class of asset-backed security, on such terms and conditions and for such period or periods as the Commis-

sion deems necessary or appropriate in the public interest or for the protection of investors.

"(B) CLASSIFICATION OF ISSUERS.—The Commission may, for purposes of this subsection, classify issuers and prescribe requirements appropriate for each class of issuer of asset-backed security.".

(b) SECURITIES ACT OF 1933.—Section 7 of the Securities Act of 1933 (15 U.S.C. 77g) is amended by adding at the end the following:

"(c) DISCLOSURE REQUIREMENTS.—

"(1) IN GENERAL.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

"(2) CONTENT OF REGULATIONS.—In adopting regulations under this subsection, the Commission shall—

"(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

"(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data necessary for investors to independently perform due diligence, including—

"(i) data having unique identifiers relating to loan brokers or originators;

"(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

"(iii) the amount of risk retention by the originator or the securitizer of such assets.".

SEC. 943. REPRESENTATIONS AND WARRANTIES IN ASSET-BACKED OFFERINGS.

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities (as that term is defined in section 3(a)(65) of the Securities Exchange Act of 1934, as added by this subtitle) that—

(1) require each credit rating agency to include in any report accompanying a credit rating a description of—

(A) the representations, warranties, and enforcement mechanisms available to investors; and

(B) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities; and

(2) require any originator to disclose fulfilled repurchase requests across all trusts aggregated by the originator, so that investors may identify asset originators with clear underwriting deficiencies.

SEC. 944. EXEMPTED TRANSACTIONS UNDER THE SECURITIES ACT OF 1933.

(a) EXEMPTION ELIMINATED.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(1) by striking paragraph (5); and

(2) by striking ''(6) transactions'' and inserting the following:

''(5) Transactions''.

(b) CONFORMING AMENDMENT.—Section 3(a)(4)(B)(vii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vii)(I)) is amended by striking ''4(6)'' and inserting ''4(5)''.

SEC. 945. DUE DILIGENCE ANALYSIS AND DISCLOSURE IN ASSET-BACKED SECURITIES ISSUES.

Section 7 of the Securities Act of 1933 (15 U.S.C. 77g), as amended by this subtitle, is amended by adding at the end the following:

"(d) REGISTRATION STATEMENT FOR ASSET-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(65) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

"(1) to perform a due diligence analysis of the assets underlying the asset-backed security; and

"(2) to disclose the nature of the analysis under paragraph (1).".

Subtitle E—Accountability and Executive Compensation

SEC. 951. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION DISCLOSURES.

(a) AMENDMENT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

"SEC. 14A. ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION.

"(a) SEPARATE RESOLUTION REQUIRED.—Any proxy or consent or authorization for an annual or other meeting of the shareholders occurring after the end of the 1-year period beginning on the date of enactment of this section, for which the proxy solicitation rules of the Commission require compensation disclosure, shall include a separate resolution subject to shareholder vote to approve the compensation of executives, as disclosed pursuant to section 229.402 of title 17, Code of Federal Regulations, or any successor thereto.

"(b) RULE OF CONSTRUCTION.—The shareholder vote referred to in subsection (a) shall not be binding on the board of directors of an issuer and may not be construed—

"(1) as overruling a decision by such board of directors;

"(2) to create or imply any change to the current fiduciary duties of such board of directors;

"(3) to create or imply any additional fiduciary duty by such board of directors; or

"(4) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.".

SEC. 952. SHAREHOLDER VOTE ON GOLDEN PARACHUTE POLICY.

(a) AMENDMENT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14A, as added by this Act, the following:

"SEC. 14B. SHAREHOLDER VOTE ON GOLDEN PARACHUTE POLICY.

"(a) DISCLOSURE.—In proxy solicitation material for an annual or other meeting of the shareholders occurring after the end of the 1-year period beginning on the date of enactment of this section, the person making such solicitation shall disclose in the proxy solicitation material, in a clear and simple form, in accordance with regulations of the Commission, any policy that the issuer has relating to the award of any type of compensation (whether present, deferred, or contingent) to any principal executive officer of the issuer—

"(1) upon the acquisition, merger, consolidation, sale, or other disposition of the issuer; and

"(2) that has not been subject to a shareholder vote under section 14A.

"(b) SHAREHOLDER APPROVAL.—

"(1) IN GENERAL.—The proxy solicitation material containing the disclosure required by section 14A shall require a separate shareholder vote to approve the policy described in subsection (a).

"(2) RULE OF CONSTRUCTION.—A vote by the shareholders referred to in paragraph (1) shall not be binding on the board of directors of an issuer and may not be construed—

"(A) as overruling a decision by such board of directors;

"(B) to create or imply any change to the current fiduciary duties of such board of directors;

"(C) to create or imply any additional fiduciary duty by such board of directors; or

"(D) to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.".

(b) DEADLINE FOR RULEMAKING.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall issue final rules to carry out section 14B of the Securities Exchange Act of 1934, as added by this section.

SEC. 953. COMPENSATION COMMITTEE INDEPENDENCE.

The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended by inserting after section 10B, as added by section 753, the following:

"SEC. 10C. COMPENSATION COMMITTEES.

"(a) INDEPENDENCE OF COMPENSATION COMMITTEES.—

"(1) LISTING STANDARDS.—The Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with the requirements of this subsection.

"(2) INDEPENDENCE OF COMPENSATION COMMITTEES.—The rules of the Commission under paragraph (1) shall require that each member of the compensation committee of the board of directors of an issuer be—

"(A) a member of the board of directors of the issuer; and

"(B) independent.

"(3) INDEPENDENCE.—The rules of the Commission under paragraph (1) shall require that, in determining the definition of the term 'independence' for purposes of paragraph (2), the national securities exchanges and the national securities associations shall consider relevant factors, including—

"(A) the source of compensation of a member of the board of directors of an issuer; and

"(B) whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

"(4) EXEMPTION AUTHORITY.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a particular relationship from the requirements of paragraph (2), with respect to the members of a compensation committee, as the national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

"(b) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMPENSATION COMMITTEE ADVISERS.—

"(1) IN GENERAL.—Any compensation consultant, legal counsel, or other adviser to the compensation committee of an issuer shall be independent.

"(2) RULES.—The Commission shall issue rules defining the term 'independent' for purposes of this subsection.

"(c) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

"(1) AUTHORITY TO RETAIN COMPENSATION CONSULTANT.—

"(A) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant.

"(B) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of a compensation consultant.

"(C) RULE OF CONSTRUCTION.—This paragraph may not be construed—

"(i) to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant; or

"(ii) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the

shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of this section, each issuer shall disclose in the proxy or consent material, in accordance with regulations of the Commission, whether—

"(A) the compensation committee of the issuer retained or obtained the advice of a compensation consultant; and

"(B) the work of the compensation committee has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

"(3) STUDY REQUIRED.—

"(A) IN GENERAL.—The Commission shall conduct a study and review of—

"(i) the use of compensation consultants by issuers in accordance with this section; and

"(ii) the effects of the use of compensation consultants on the performance of issuers.

"(B) REPORT TO CONGRESS.—Not earlier than 3 years or later than 5 years after the date of enactment of this section, the Commis-

sion shall submit a report to Congress on the results of the study and review under subparagraph (A).

"(d) AUTHORITY TO ENGAGE INDEPENDENT LEGAL COUNSEL AND OTHER ADVISERS.—

"(1) IN GENERAL.—The compensation committee of an issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain and obtain the advice of independent legal counsel and other advisers.

"(2) DIRECT RESPONSIBILITY OF COMPENSATION COMMITTEE.—The compensation committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of independent legal counsel and other advisers.

"(3) RULE OF CONSTRUCTION.—This subsection may not be construed—

"(A) to require a compensation committee to implement or act consistently with the advice or recommendations of independent legal counsel or other advisers under this subsection; or

"(B) to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

"(e) COMPENSATION OF COMPENSATION CONSULTANTS, INDEPENDENT LEGAL COUNSEL, AND OTHER ADVISORS.—Each issuer shall provide for appropriate funding, as determined by the compensation committee in its capacity as a committee of the board of directors, for payment of reasonable compensation—

"(1) to a compensation consultant; and

"(2) to independent legal counsel or any other adviser to the compensation committee.

"(f) COMMISSION RULES.—

"(1) IN GENERAL.—Not later than 360 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of this section.

"(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for the prohibition under paragraph (1), before the imposition of such prohibition.

"(3) EXEMPTION AUTHORITY.—

"(A) IN GENERAL.—The rules of the Commission under paragraph (1) shall permit a national securities exchange or a national securities association to exempt a category of issuers from the requirements under this section, as the national securities exchange or the national securities association determines is appropriate.

"(B) CONSIDERATIONS.—In determining appropriate exemptions under subparagraph (A), the national securities exchange or the national securities association shall take into account the potential impact of the requirements of this section on smaller reporting issuers.".

SEC. 954. EXECUTIVE COMPENSATION DISCLOSURES.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

"(j) DISCLOSURE OF EXECUTIVE COMPENSATION.—The Commission shall, by rule, require each issuer to disclose in the annual proxy statement of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including—

"(1) information that shows the relationship between executive compensation and the financial performance of the issuer; and

"(2) a graphic or pictorial comparison of the amount of executive compensation and the financial performance of the issuer or return to investors of the issuer during a 5-year period, or such other period, as determined by the Commission.".

SEC. 955. CLAWBACK.

Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

"(h) CLAWBACK POLICY.—Each issuer shall develop and implement a policy providing that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer with any financial reporting requirement under the securities laws, the issuer will recover from any current or former executive officer of the issuer who received incentive-based compensation (including stock options awarded as compensation) during the 3-year period preceding the date on which the issuer is required to prepare an accounting restatement based on the erroneous data, in excess of what would have been paid to the executive officer under the accounting restatement.".

SEC. 956. DISCLOSURE REGARDING EMPLOYEE HEDGING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this title, is amended by adding at the end the following:

''(l) DISCLOSURE OF HEDGING BY EMPLOYEES.—The Commission shall, by rule, require each issuer to disclose in the annual proxy statement of the issuer whether the employees of the issuer are permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities granted to employees by the issuer as part of an employee compensation.''.

SEC. 957. COMPENSATION STANDARDS FOR HOLDING COMPANIES OF DEPOSITORY INSTITUTIONS.

Section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844) is amended by adding at the end the following:

''(h) EXCESSIVE COMPENSATION.—

''(1) IN GENERAL.—Not later than 180 days after the transfer date established under section 321 of the Restoring American Financial Stability Act of 2009, FIRA shall, by rule, establish standards prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company that—

"(A) provides an executive officer, employee, director, or principal shareholder of the bank holding company with excessive compensation, fees, or benefits; or

"(B) could lead to material financial loss to the bank holding company.

"(2) CONSIDERATIONS.—In establishing the standards under paragraph (1), FIRA shall take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1(c)).".

SEC. 958. HIGHER CAPITAL CHARGES.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(y) COMPENSATION PRACTICES OF DEPOSITORY INSTITUTIONS.—The appropriate Federal banking agency may impose higher capital standards for an insured depository institution with compensation practices that the appropriate Federal banking agency determines pose a risk of harm to the depository institution.".

SEC. 959. COMPENSATION STANDARDS FOR HOLDING COMPANIES OF DEPOSITORY INSTITUTIONS.

The appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act (12

U.S.C. 1813), shall prohibit the payment by a depository institution holding company of executive compensation that is excessive or could lead to material financial loss to the institution controlled by the depository institution holding company, or to the consolidated depository institution holding company.

Subtitle F—Improvements to the Management of the Securities and Exchange Commission

SEC. 961. REPORT AND CERTIFICATION OF INTERNAL SUPERVISORY CONTROLS.

(a) ANNUAL REPORTS AND CERTIFICATION.—Not later than 90 days after end of each fiscal year, the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

(b) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain—

(1) an assessment, as of the end of the most recent fiscal year, of the effectiveness of—

(A) the internal supervisory controls of the Commission; and

(B) the procedures of the Commission applicable to the staff of the Commission who perform examinations of registered entities, enforcement investigations, and reviews of corporation financial securities filings;

(2) a certification that the Commission has adequate internal supervisory controls to carry out the duties of the Commission described in paragraph (1)(B); and

(3) a summary by the Comptroller General of the United States of the assessment carried out under subsection (d).

(c) CERTIFICATION.—

(1) SIGNATURE.—The certification under subsection (b)(2) shall be signed by the Director of the Division of Enforcement, the Director of the Division of Corporation Finance, and the Director of the Office of Compliance Inspections and Examinations (or the head of any successor division or office).

(2) CONTENT OF CERTIFICATION.—Each individual described in paragraph (1) shall certify that the individual—

(A) is directly responsible for establishing and maintaining the internal supervisory con-

trols of the Division or Office of which the individual is the head;

(B) has designed the internal supervisory controls of the Division or Office of which the individual is the head;

(C) has evaluated the effectiveness of the internal supervisory controls during the 90-day period ending on the final day of the fiscal year to which the report relates; and

(D) has disclosed to the Commission any significant deficiencies in the design or operation of internal supervisory controls that could adversely affect the ability of the Division or Office to consistently conduct inspections, or investigations, or reviews of filings with professional competence and integrity.

(d) ATTESTATION BY THE COMPTROLLER GENERAL.—The Comptroller General of the United States shall attest to the adequacy and effectiveness of the internal supervisory control structure and procedures described in subsection (b)(1).

SEC. 962. BIANNUAL REPORT ON PERSONNEL MANAGEMENT.

(a) BIANNUAL REPORT REQUIRED.—The Comptroller General of the United States shall submit a bian-

nual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

(b) CONTENTS OF REPORT.—Each report under subsection (a) shall include—

(1) an evaluation of—

(A) the effectiveness of supervisors in using the skills, talents, and motivation of the employees of the Commission to achieve the goals of the Commission;

(B) the criteria for promoting employees of the Commission to supervisory positions;

(C) the fairness of the promotion decisions of the Commission, as perceived by the employees of the Commission;

(D) the competence the professional staff of the Commission;

(E) the efficiency of communication between the units of the Commission regarding the work of the Commission (including communication between divisions and between subunits of a division) and the efforts by the Commission to promote such communication;

(F) the turnover within subunits of the Commission, including the identification of supervisors whose subordinates have an unusually high rate of turnover;

(G) whether there are excessive numbers of low- and mid-level managers;

(H) any initiatives of the Commission that increase the competence of the staff of the Commission;

(I) the actions taken by the Commission regarding employees of the Commission who have failed to perform their duties; and

(J) such other factors relating to the management of the Commission as the Comptroller General determines are appropriate; and

(2) recommendations for how the Commission can use the human resources of the Commission more effectively and efficiently to carry out the mission of the Commission.

(c) CONSULTATION.—In preparing the report under subsection (a), the Comptroller General shall consult with current employees of the Commission, retired employees and other former employees of the Commission, persons that have business before the Commission, any collective bargaining unit representing the employees of the Com-

mission, private management consultants, academics, and any other source that the Comptroller General deems appropriate.

(d) REPORT BY COMMISSION.—Not later than 90 days after the date on which the Comptroller General submits each report under subsection (a), the Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report describing the actions taken by the Commission in response to the recommendations contained in the report under subsection (a).

(e) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under this section, as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received; and

(B) remain available until expended.

SEC. 963. ANNUAL FINANCIAL CONTROLS AUDIT.

(a) REPORTS OF COMMISSION.—

(1) ANNUAL REPORTS REQUIRED.—Not later than 6 months after the end of each fiscal year, the Commission shall publish and submit to Congress a report that—

(A) describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(B) contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

(2) ATTESTATION.—The reports required under paragraph (1) shall be attested to by the Chairman and chief financial officer of the Commission.

(b) REPORT BY COMPTROLLER GENERAL.—

(1) REPORT REQUIRED.—Not later than 6 months after the end of each fiscal year, the Comptroller General of the United States shall submit an annual report to Congress that assesses—

(A) the effectiveness of the internal control structure and procedures of the Commission for financial reporting; and

(B) the assessment of the Commission under subsection (a)(1)(B).

(2) ATTESTATION.—The Comptroller General shall attest to, and report on, the assessment made by the Commission under subsection (a).

(c) REIMBURSEMENTS FOR COST OF REPORTS.—

(1) REIMBURSEMENTS REQUIRED.—The Commission shall reimburse the Government Accountability Office for the full cost of making the reports under subsection (b), as billed therefor by the Comptroller General.

(2) CREDITING AND USE OF REIMBURSEMENTS.—Such reimbursements shall—

(A) be credited to the appropriation account ''Salaries and Expenses, Government Accountability Office'' current when the payment is received; and

(B) remain available until expended.

SEC. 964. REPORT ON OVERSIGHT OF NATIONAL SECURITIES ASSOCIATIONS.

(a) STUDY AND REPORT.—Not later than September 30, 2010, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report on the oversight by the Commission of national securities associations registered under section 15A of the

Securities Exchange Act of 1934 (15 U.S.C. 78o-3) that includes an evaluation of—

(1) the governance of such national securities associations, including the identification and management of conflicts of interest by such national securities associations;

(2) the examinations by the Commission of such national securities associations, including the expertise of the examiners;

(3) the oversight by the Commission of the executive compensation practices of such national securities associations;

(4) arbitration services provided by the national securities associations;

(5) the review performed by national securities associations of advertising by the members of the national securities associations; and

(6) any other issue that has an impact, as determined by the Comptroller General on—

(A) the effectiveness of such national securities associations in performing the mission of the national securities associations;

(B) the public confidence in such national securities associations; and

(C) the confidence of the members of such national securities associations in the national securities associations.

SEC. 965. COMPLIANCE EXAMINERS.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

''(h) EXAMINERS.—

''(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

''(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

''(B) report to the Director of that Division.

''(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

''(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

"(B) report to the Director of that Division.".

SEC. 966. REPORTS OF MISCONDUCT BY EMPLOYEES OF THE COMMISSION.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

"(i) ADDITIONAL DUTIES OF INSPECTOR GENERAL.—

"(1) REPORTS OF MISCONDUCT BY EMPLOYEES OF COMMISSION.—

"(A) HOTLINE ESTABLISHED.—The Inspector General of the Commission shall establish and maintain a telephone hotline or other electronic means for the receipt of—

"(i) suggestions by employees of the Commission for improvements in the work effectiveness and the use of the resources of the Commission; and

"(ii) allegations by employees of the Commission of waste, abuse, misconduct, and ineffectiveness within the Commission.

"(B) CONFIDENTIALITY.—The Inspector General shall maintain the confidentiality of

any information received by the means established under subparagraph (A).

"(2) CONSIDERATION OF REPORTS.—The Inspector General shall consider any suggestions or allegations received by the means established under subparagraph (A) and take appropriate action in relation to such suggestions or allegations.

"(3) REWARD.—

"(A) IN GENERAL.—The Inspector General may, as the Inspector General determines appropriate, pay a monetary award to any employee who makes a suggestion or allegation by the means established under paragraph (1) that results in—

"(i) action by the Commission that increases work effectiveness; or

"(ii) a reduction of waste, abuse, misconduct, or ineffectiveness within the Commission.

"(B) LIMITATION ON AMOUNT OF AWARD.—No award paid by the Inspector General under this paragraph may exceed $50,000, unless the Inspector General determines that the suggestion or allegation has extraordinary merit.

"(C) NO APPEAL.—Any determination of the Inspector General under this paragraph, including whether, to whom, or in what amount to make an award, shall be—

"(i) in the sole discretion of the Inspector General; and

"(ii) final and not subject to judicial review.

"(4) REPORT.—The Inspector General of the shall submit to Congress an annual report containing a description of—

"(A) the nature, number, and seriousness of any allegations received under paragraph (1);

"(B) any action the Inspector General has taken in response to substantiated allegations received under paragraph (1); and

"(C) any action the Commission has taken in response to suggestions and allegations received under paragraph (1).

"(5) FUNDING.—The activities of the Inspector General under this subsection shall be funded by the Securities and Exchange Commission Investor Protection Fund established under section 21F.".

Subtitle G—Strengthening Corporate Governance

SEC. 971. ELECTION OF DIRECTORS BY MAJORITY VOTE IN UNCONTESTED ELECTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14 (15 U.S.C. 78n) the following:

"SEC. 14A. CORPORATE GOVERNANCE.

"(a) CORPORATE GOVERNANCE STANDARDS.—

"(1) LISTING STANDARDS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any of the requirements of this subsection.

"(B) OPPORTUNITY TO COMPLY AND CURE.—The rules established under this paragraph shall allow an issuer to have an opportunity to come into compliance with the requirements of this subsection, and to cure any defect that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(C) AUTHORITY TO EXEMPT.—The Commission may, by rule or order, exempt an issuer from any or all of the requirements of this subsection and the rules issued under this subsection, based on the size of the issuer, the market capitalization of the issuer, the number of shareholders of record of the issuer, or any other criteria, as the Commission deems necessary and appropriate in the public interest or for the protection of investors.

"(2) COMMISSION RULES ON ELECTIONS.—In an election for membership on the board of directors of an issuer—

"(A) that is uncontested, each director who receives a majority of the votes cast shall be deemed to be elected;

"(B) that is contested, if the number of nominees exceeds the number of directors to be elected, each director shall be elected by the vote of a plurality of the shares represented at a meeting and entitled to vote; and

"(C) if a director of an issuer receives less than a majority of the votes cast in an uncontested election—

"(i) the director shall tender the resignation of the director to the board of directors; and

"(ii) the board of directors—

"(I) shall—

"(aa) accept the resignation of the director;

"(bb) determine a date on which the resignation will take effect, within a reasonable period of time, as established by the Commission; and

"(cc) make the date under item (bb) public within a reasonable period of time, as established by the Commission; or

"(II) shall, upon a unanimous vote of the board, decline to accept the resignation and, not later than 30 days after the date of the vote (or within such shorter period as the Commission may establish), make public the reasons that—

"(aa) the board chose not to accept the resignation; and

"(bb) the decision was in the best interests of the issuer and the shareholders of the issuer.".

SEC. 972. PROXY ACCESS.

(a) PROXY ACCESS.—Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

"(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

"(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).".

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules permitting the use by shareholders of proxy solicitation materials supplied by an issuer of securities for the purpose of nominating individuals to membership on the board of directors of the issuer, under such terms and conditions as the Commission determines are in the

interests of shareholders and for the protection of investors.

SEC. 973. DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.

Section 14A of the Securities Exchange Act of 1934, as added by section 971, is amended by adding at the end the following:

''(b) DISCLOSURES REGARDING CHAIRMAN AND CEO STRUCTURES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules that require an issuer to disclose in the annual proxy sent to investors the reasons why the issuer has chosen—

''(1) the same person to serve as chairman of the board of directors and chief executive officer (or in equivalent positions); or

''(2) different individuals to serve as chairman of the board of directors and chief executive officer (or in equivalent positions of the issuer).''.

SEC. 974. SHAREHOLDER VOTE ON STAGGERED TERMS OF DIRECTORS.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by this subtitle, is amended by adding at the end the following:

''(k) SHAREHOLDER VOTE ON STAGGERED BOARD OF DIRECTORS.—

"(1) LISTING STANDARDS.—Not later than 1 year after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and the national securities associations to prohibit the listing of any security of an issuer that is not in compliance with any of the requirements of this subsection.

"(2) SHAREHOLDER VOTE REQUIRED.—

"(A) IN GENERAL.—No issuer may have a board of directors with staggered terms of service, unless the issuer has obtained the approval or ratification of the shareholders of the issuer, in accordance with subparagraph (B), before the adoption of such board of directors with staggered terms of service.

"(B) SHAREHOLDER VOTE.—The percentage of shareholders required to approve or ratify the board of directors with staggered terms of service of an issuer shall be the percentage required by the issuer for an amendment to—

"(i) the certificate of incorporation of the issuer, in the case of a board of directors with staggered terms of service adopted pursuant to a certificate of incorporation of the issuer; or

"(ii) the bylaws of the issuer, in the case of a board of directors with staggered terms of service adopted pursuant to the bylaws of the issuer.

"(C) TRANSITION PERIOD.—In the case of any issuer having a board of directors with staggered terms of service that, on the effective date of the rule promulgated by the Commission under paragraph (1), was not approved or ratified by a vote of the shareholders of the issuer, the issuer shall not be deemed to be in violation of this subsection if such issuer—

"(i) seeks the approval of the shareholders of the issuer at the first annual meeting immediately following the date on which the Commission promulgates rules under paragraph (1); or

"(ii) in the event that the annual meeting described in clause (i) is scheduled be held fewer than 120 days after the effective date of the rules promulgated by the Commission under subparagraph (1), seeks the approval of the shareholders of the issuer at first annual meeting imme-

diately following the end of such 120-day period.

''(D) DEFINITION.—In this paragraph, the term 'board of directors with staggered terms of service' means a board of directors of an issuer that conducts an annual election for membership on such board of directors in which fewer than all members are elected to such board of directors.''.

Subtitle H—Municipal Securities

SEC. 975. REGULATION OF MUNICIPAL SECURITIES AND CHANGES TO THE BOARD OF THE MSRB.

(a) REGISTRATION OF MUNICIPAL SECURITIES DEALERS AND MUNICIPAL ADVISORS.—Section 15B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(a)) is amended—

(1) in paragraph (1)—

(A) by inserting ''(A)'' after ''(1)''; and

(B) by adding at the end the following:

''(B) It shall be unlawful for a municipal advisor to provide advice to or on behalf of an issuer of municipal securities with respect to municipal financial products or the issuance of municipal securities unless the municipal advi-

sor is registered in accordance with this subsection.'';

(2) in paragraph (2), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(3) in paragraph (3), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears; and

(4) in paragraph (4), by striking ''dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers'' and inserting ''dealer, municipal securities dealer, or municipal advisor, or class of brokers, dealers, municipal securities dealers, or municipal advisors''.

(b) MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(b)) is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''Not later than'' and all that follows through ''composed initially'' and inserting ''The Municipal Securities Rulemaking Board shall be composed'';

(B) by striking the second sentence and inserting the following: ''The members of the

Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are not associated with any broker, dealer, municipal securities dealer, or municipal advisor (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or dealer, at least 3 of whom shall be representatives of institutional and retail investors in municipal securities, and at least 2 of whom shall be representatives of issuers of municipal securities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as 'public representatives'); and (B) 7 individuals who are associated with a broker, dealer, or municipal securities dealer that is not a bank or a subsidiary or department or division of a bank (which members are hereinafter referred to as 'broker-dealer representatives'), including not fewer than 2 individuals who are associated with and representative of municipal securities

dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives'), and at least 1 individual who is associated with a municipal advisor (which member is hereinafter referred to as the 'advisor representative').''; and

(C) in the third sentence, by striking ''initial'';

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A)—

(i) by inserting before the period at the end of the first sentence the following: ''and advice provided to or on behalf of an issuer of municipal securities by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products or the issuance of municipal securities''; and

(ii) by striking the second sentence;

(B) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting ", and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of an issuer of municipal securities with respect to municipal financial products or the issuance of municipal securities" after "sale of, any municipal security"; and

(II) by inserting "and issuers of municipal securities" after "protection of investors";

(ii) in clause (i), by striking "municipal securities brokers and municipal securities dealers" each place that term appears and inserting "municipal securities brokers, municipal securities dealers, and municipal advisors";

(iii) in clause (ii), by adding "and" at the end;

(iv) in clause (iii), by striking "; and" and inserting a period; and

(v) by striking clause (iv);

(C) in subparagraph (B), by striking "nominations and elections" and all that follows through "specify" and inserting "nominations

and elections of public representatives, broker-dealer representatives, bank representatives, and advisor representatives. Such rules shall provide that the membership of the Board shall at all times be as evenly divided in number as possible between entities or individuals who are subject to regulation by the Board and entities or individuals not subject to regulation by the Board. Such rules shall also specify'';

(D) in subparagraph (C)—

(i) by inserting ''and municipal financial products'' after ''municipal securities'' the first two times that term appears;

(ii) by inserting '', issuers,'' before ''and the public interest'';

(iii) by striking ''between'' and inserting ''among''; and

(iv) by striking ''or municipal securities dealers, to fix'' and inserting ''municipal securities dealers, or municipal advisors, to fix'';

(E) in subparagraph (D)—

(i) by inserting ''and advice concerning municipal financial products'' after ''transactions in municipal securities'';

(ii) by striking ''That no'' and inserting ''that no'';

(iii) by inserting ''municipal advisor,'' before ''or person associated''; and

(iv) by striking ''a municipal securities broker or municipal securities dealer may be compelled'' and inserting ''a municipal securities broker, municipal securities dealer, or municipal advisor may be compelled'';

(F) in subparagraph (E)—

(i) by striking ''municipal securities brokers and municipal securities dealers'' and inserting ''municipal securities brokers, municipal securities dealers, and municipal advisors''; and

(ii) by striking ''municipal securities broker or municipal securities dealer'' and inserting ''municipal securities broker, municipal securities dealer, or municipal advisor'';

(G) in subparagraph (G), by striking ''municipal securities brokers and municipal securities dealers'' and inserting ''municipal securities

brokers, municipal securities dealers, and municipal advisors'';

(H) in subparagraph (J)—

(i) by striking ''municipal securities broker and each municipal securities dealer'' and inserting ''municipal securities broker, municipal securities dealer, and municipal advisor''; and

(ii) by striking the period at the end of the second sentence and inserting '', which may include charges for failure to submit to the Board required information or documents to any information system operated by the Board in a full, accurate, or timely manner, or any other failure to comply with the rules of the Board.''; and

(I) in subparagraph (K)—

(i) by inserting ''broker, dealer, or'' before ''municipal securities dealer'' each place that term appears; and

(ii) by striking ''municipal securities investment portfolio'' and insert ''related account of a broker, dealer, or municipal securities dealer'';

(3) by redesignating paragraph (3) as paragraph (7); and

(4) by inserting after paragraph (2) the following:

''(3) The Board shall serve as a repository of information from municipal market participants required by FIRA.

''(4) The Board shall provide guidance and assistance in the enforcement of the rules promulgated by the Board pursuant to subsection (c).

''(5) The Board, in conjunction with or on behalf of other Federal financial regulators or self-regulatory organizations, may—

''(A) establish information systems; and

''(B) assess such reasonable fees and charges for the submission of information to, or the receipt of information from, such systems from any persons, in furtherance of the purposes of the Board, other Federal financial regulator, or self-regulatory organization.

''(6) The Board shall provide guidance and assistance in the enforcement of, and examination for, compliance with the rules of the Board to the Commission, a registered securities association under

section 15A, or any other appropriate regulatory agency, as applicable.''.

(c) DISCIPLINE OF DEALERS AND MUNICIPAL ADVISORS AND OTHER MATTERS.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)) is amended—

(1) in paragraph (1), by inserting '', and no broker, dealer, municipal securities dealer, or municipal advisor shall provide advice to or on behalf of an issuer of municipal securities with respect to municipal financial products or the issuance of municipal securities,'' after ''any municipal security'';

(2) in paragraph (2), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(3) in paragraph (3)—

(A) by inserting ''or issuers'' after ''protection of investors'' each place that term appears; and

(B) by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(4) in paragraph (4), by inserting ''or municipal advisor'' after ''municipal securities dealer'' each place that term appears;

(5) in paragraph (6)(B), by inserting ''or issuers'' after ''protection of investors'';

(6) in paragraph (7)

(A) in subparagraph (A)—

(i) by amending clause (i) to read as follows:

''(i) the Commission, or its designee, in the case of municipal advisors who are not banks or subsidiaries, or departments or divisions of banks and municipal securities brokers and municipal securities dealers who are members of a registered securities association; and''; and

(ii) in clause (ii), by inserting '', and any municipal advisor who is a bank or subsidiary or department or division of a bank'' after ''municipal securities dealers''; and

(B) in subparagraph (B), by inserting ''or issuers'' after ''protection of investors''; and

(7) by adding at the end the following:

''(9) Fines collected by the Commission or its designee for violations of the rules of the Board shall be equally divided between the Commission or any such designee and the Board''.

(d) ISSUANCE OF MUNICIPAL SECURITIES.—Section 15B(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) is amended—

(1) by striking ''through a municipal securities broker or municipal securities dealer or otherwise'' and insert ''through a municipal securities broker, municipal securities dealer, municipal advisor, or otherwise''; and

(2) by inserting ''or municipal advisors'' before ''to furnish''.

(e) DEFINITIONS.—Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) is amended by adding at the end the following:

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'Board' means the Municipal Securities Rulemaking Board established under subsection (b)(1);

''(2) the term 'guaranteed investment contract' includes any investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on 2 or more future dates, such as a forward supply contract;

"(3) the term 'investment strategies' means plans or programs for the investment of the proceeds of municipal securities that are not municipal derivatives, including guaranteed investment contracts and the recommendation of and brokerage of municipal escrow investments;

"(4) the term 'municipal advisor' means a financial advisor or consultant (who is not an issuer of municipal securities or an employee of an issuer of municipal securities) that provides advice to or on behalf of an issuer of municipal securities with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues, but who is not a broker, dealer, or municipal securities dealer (including financial advisors, guaranteed investment contract brokers, third-party marketers, placement agents, solicitors, finders, and swap advisors, but not including attorneys and engineers) and, except to the extent that such municipal advisors are subject to sales practice rules for registered broker-dealers;

"(5) the term 'municipal derivative' means any financial instrument whose characteristics and value

depend upon the characteristics and value of a municipal security or securities (including interest rate swaps, basis swaps, caps, floors, and collars);

"(6) the term 'municipal financial product' means municipal derivatives and investment strategies; and

"(7) the term 'rules of the Board' means the rules proposed and adopted by the Board under subsection (b)(2).".

(f) REGISTERED SECURITIES ASSOCIATION.—Section 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the end the following:

"(15) The rules of the association provide that the association shall—

"(A) request guidance from the Municipal Securities Rulemaking Board in interpretation of the rules of the association; and

"(B) provide information to the Municipal Securities Rulemaking Board about the enforcement actions and examinations of the association under section 15B(b)(2)(E), so that the Municipal Securities Rulemaking Board may—

"(i) assist in such enforcement actions and examinations; and

"(ii) evaluate the ongoing effectiveness of the rules of the Board.".

(g) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on October 1, 2010.

SEC. 976. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF INCREASED DISCLOSURE TO INVESTORS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study and review of the disclosure required to be made by issuers of municipal securities.

(b) SUBJECTS FOR EVALUATION.—In conducting the study under subsection (a), the Comptroller General of the United States shall—

(1) broadly describe the size of the municipal securities markets and the issuers and investors;

(2) compare the amount of disclosure issuers of municipal bonds are required by law to provide for the benefit of municipal bondholders, including the amount of and frequency of disclosure actually provided by issuers of municipal bonds, with the amount of and frequency of disclosure issuers of corporate bonds provide for the benefit of corporate bondholders;

(3) evaluate the costs and benefits to issuers of municipal securities of requiring issuers of municipal

bonds to provide additional financial disclosures for the benefit of investors; and

(4) make recommendations relating to the advisability of the repeal of section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) (commonly known as the ''Tower Amendment'').

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study conducted under subsection (a), including recommendations for how to improve disclosure by issuers of municipal securities.

SEC. 977. MUNICIPAL SECURITIES RULEMAKING BOARD STUDY ON TRANSPARENCY OF TRADING IN THE MUNICIPAL SECURITIES.

(a) STUDY.—The Municipal Securities Rulemaking Board established under section 15B(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(d)) shall conduct a study of the transparency of trading in the municipal securities market.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Municipal Securities Rulemaking Board shall submit a report to Congress on the results of the study conducted under subsection (a), including—

(1) the history of trade reporting;

(2) the impact of recent innovations; and

(3) recommendations for how to improve the transparency of trading in the municipal securities market.

SEC. 978. STUDY OF FUNDING FOR GOVERNMENT ACCOUNTING STANDARDS BOARD.

(a) STUDY.—The Commission shall conduct a study that evaluates—

(1) the role and importance of the Government Accounting Standards Board in the municipal securities markets;

(2) the manner in which the Government Accounting Standards Board is funded, and how such manner of funding affects the financial information available to securities investors;

(3) the advisability of changes to the manner in which the Government Accounting Standards Board is funded; and

(4) whether legislative changes to the manner in which the Government Accounting Standards Board is funded are necessary for the benefit of investors and in the public interest.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Commission shall submit to

the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under subsection (a).

Subtitle I—Public Company Accounting Oversight Board, Aiding and Abetting, and Other Matters

SEC. 981. AUTHORITY TO SHARE CERTAIN INFORMATION WITH FOREIGN AUTHORITIES.

(a) DEFINITION.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by adding at the end the following:

"(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term 'foreign auditor oversight authority' means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.".

(b) AVAILABILITY TO SHARE INFORMATION.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:

"(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

"(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

"(ii) the foreign auditor oversight authority provides—

"(I) such assurances of confidentiality as the Board may request;

"(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

"(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight

authority that are relevant to information access; and

"(iii) the Board determines that it is appropriate to share such information.".

(c) CONFORMING AMENDMENT.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

SEC. 982. OVERSIGHT OF BROKERS AND DEALERS.

(a) DEFINITIONS.—

(1) DEFINITIONS AMENDED.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.) is amended by adding at the end the following new section:

"SEC. 110. DEFINITIONS.

"For the purposes of this title, the following definitions shall apply:

"(1) AUDIT.—The term 'audit' means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

"(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

"(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

"(B) in which a public accounting firm either—

"(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

"(ii) asserts that no such opinion can be expressed.

"(3) BROKER.—The term 'broker' means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(4) DEALER.—The term 'dealer' means a dealer (as such term is defined in section 3(a)(5) of

the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

"(5) PROFESSIONAL STANDARDS.—The term 'professional standards' means—

"(A) accounting principles that are—

"(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

"(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

"(B) auditing standards, standards for attestation engagements, quality control policies

and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

"(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

"(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

"(6) SELF-REGULATORY ORGANIZATION.—The term 'self-regulatory organization' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).".

(2) CONFORMING AMENDMENT.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended in the matter preceding paragraph (1), by striking "In this" and inserting "Except as otherwise specifically provided in this Act, in this".

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211) is amended—

(1) by striking ''issuers'' each place that term appears and inserting ''issuers, brokers, and dealers''; and

(2) in subsection (a)—

(A) by striking ''public companies'' and inserting ''companies''; and

(B) by striking ''for companies the securities of which are sold to, and held by and for, public investors''.

(c) REGISTRATION WITH THE BOARD.—Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in subsection (a)—

(A) by striking ''Beginning 180'' and all that follows through ''101(d), it'' and inserting ''It''; and

(B) by striking ''issuer'' and inserting ''issuer, broker, or dealer'';

(2) in subsection (b)—

(A) in paragraph (2)(A), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''; and

(B) by striking ''issuer'' each place that term appears and inserting ''issuer, broker, or dealer''.

(d) AUDITING AND INDEPENDENCE.—Section 103(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213(a)) is amended—

(1) in paragraph (1), by striking ''and such ethics standards'' and inserting ''such ethics standards, and such independence standards'';

(2) in paragraph (2)(A)(iii), by striking ''describe in each audit report'' and inserting ''in each audit report for an issuer, describe''; and

(3) in paragraph (2)(B)(i), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''.

(e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—Section 104 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214) is amended—

(1) in subsection (a), by striking ''issuers'' and inserting ''issuers, brokers, and dealers''; and

(2) in subsection (b)(1)—

(A) by striking ''audit reports for'' each place that term appears and inserting ''audit reports on annual financial statements for'';

(B) in subparagraph (A), by striking ''and'' at the end;

(C) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(C) with respect to each registered public accounting firm that regularly provides audit reports and that is not described in subparagraph (A) or (B), on a basis determined by the Board, by rule, that is consistent with the public interest and protection of investors.''.

(f) INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.—Section 105(c)(7)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(7)(B)) is amended—

(1) in the subparagraph heading, by inserting '', BROKER, OR DEALER'' after ''ISSUER'';

(2) by striking ''any issuer'' each place that term appears and inserting ''any issuer, broker, or dealer''; and

(3) by striking ''an issuer under this subsection'' and inserting ''a registered public accounting firm under this subsection''.

(g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section 106(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216(a)) is amended—

(1) in paragraph (1), by striking ''issuer'' and inserting ''issuer, broker, or dealer''; and

(2) in paragraph (2), by striking ''issuers'' and inserting ''issuers, brokers, or dealers''.

(h) FUNDING.—Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) in subsection (c)(2), by striking ''subsection (i)'' and inserting ''subsection (j)'';

(2) in subsection (d)—

(A) in paragraph (2), by striking ''allowing for differentiation among classes of issuers, as appropriate'' and inserting ''and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate''; and

(B) by adding at the end the following:

''(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the effective date of this paragraph.'';

(3) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(4) by inserting after subsection (g) the following:

''(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

"(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

"(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

"(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer, compared to the total net capital of all brokers and dealers, in accordance with rules issued by the Board.".

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY ORGANIZATION.—Section 105(b)(4)(B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(4)(B)) is amended—

(1) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following:

"(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or deal-

er that is under the jurisdiction of such self-regulatory organization;''.

(j) USE OF DOCUMENTS RELATED TO AN INSPECTION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(B)(ii)) is amended—

(1) in subclause (III), by striking ''and'' at the end;

(2) in subclause (IV), by striking the comma and inserting ''; and''; and

(3) by inserting after subclause (IV) the following:

''(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,''.

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 983. PORTFOLIO MARGINING.

(a) ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1)) is amended by inserting ''or options on commodity futures contracts'' after ''claim for securities''.

(b) DEFINITIONS.—Section 16 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78*lll*) is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) CUSTOMER.—

"(A) IN GENERAL.—The term 'customer' of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

"(B) INCLUDED PERSONS.—The term 'customer' includes—

"(i) any person who has deposited cash with the debtor for the purpose of purchasing securities;

"(ii) any person who has a claim against the debtor for cash, securities, futures contracts, or options on futures con-

tracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; and

"(iii) any person who has a claim against the debtor arising out of sales or conversions of such securities.

"(C) EXCLUDED PERSONS.—The term 'customer' does not include any person, to the extent that—

"(i) the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

"(ii) such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.";

(2) in paragraph (4)—

(A) in subparagraph (C), by striking ''and'' at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following:

''(D) in the case of a portfolio margining account of a customer that is carried as a securities account pursuant to a portfolio margining program approved by the Commission, a futures contract or an option on a futures contract received, acquired, or held by or for the account of a debtor from or for such portfolio margining account, and the proceeds thereof; and'';

(3) in paragraph (9), in the matter following subparagraph (L), by inserting after ''Such term'' the following: ''includes revenues earned by a broker or dealer in connection with a transaction in the portfolio margining account of a customer carried as securities accounts pursuant to a portfolio margining program approved by the Commission. Such term''; and

(4) in paragraph (11)

(A) in subparagraph (A)—

(i) by striking ''filing date, all'' and all that follows through the end of the subparagraph and inserting the following: ''filing date—

''(i) all securities positions of such customer (other than customer name securities reclaimed by such customer); and

''(ii) all positions in futures contracts and options on futures contracts held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission; minus''; and

(B) in the matter following subparagraph (C), by striking ''In determining'' and inserting the following: ''A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission or a claim for a security futures contract, shall be deemed to be a claim with respect to such contract as of the filing date, and such claim shall be treated as a claim for cash. In determining''.

SEC. 984. PRIVATE CIVIL ACTION FOR AIDING AND ABETTING.

Section 21D of the Securities Exchange Act of 1934 (15 U.S.C. 78u-4) is amended by adding at the end the following:

''(g) PRIVATE CIVIL ACTIONS.—For purposes of any private civil action implied under this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided.''.

SEC. 985. TECHNICAL CORRECTIONS TO FEDERAL SECURITIES LAWS.

(a) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by striking ''individual;'' and inserting ''individual,'';

(2) in section 18 (15 U.S.C. 77r)—

(A) in subsection (b)(1)(C), by striking ''is a security'' and inserting ''a security''; and

(B) in subsection (c)(2)(B)(i), by striking ''State, or'' and inserting ''State or'';

(3) in section 19(d)(6)(A) (15 U.S.C. 77s(d)(6)(A)), by striking ''in paragraph (1) of (3)'' and inserting ''in paragraph (1) or (3)''; and

(4) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking ''business entity;'' and inserting ''business entity,''.

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 2 (15 U.S.C. 78b), by striking ''affected'' and inserting ''effected'';

(2) in section 3 (15 U.S.C. 78c)—

(A) in subsection (a)(55)(A), by striking ''section 3(a)(12) of the Securities Exchange Act of 1934'' and inserting ''section 3(a)(12) of this title''; and

(B) in subsection (g), by striking ''company, account person, or entity'' and inserting ''company, account, person, or entity'';

(3) in section 10A(i)(1)(B) (15 U.S.C. 78j–1(i)(1)(B))—

(A) in the subparagraph heading, by striking ''MINIMUS'' and inserting ''MINIMIS''; and

(B) in clause (i), by striking ''nonaudit'' and inserting ''non-audit'';

(4) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking ''earning statement'' and inserting ''earnings statement'';

(5) in section 15 (15 U.S.C. 78o)—

(A) in subsection (b)(1)—

(i) in subparagraph (B), by striking ''The order granting'' and all that follows through ''from such membership.''; and

(ii) in the undesignated matter immediately following subparagraph (B), by inserting after the first sentence the following: ''The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange, if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.'';

(6) in section 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

(A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and adjusting the subparagraph margins accordingly;

(B) in subparagraph (B), as so redesignated, by striking ''The order granting'' and all that follows through ''from such membership.''; and

(C) in the matter following subparagraph (B), as so redesignated, by inserting after the first sentence the following: ''The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.'';

(7) in section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), by striking ''section 206(b)'' and inserting ''section 206B'';

(8) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking ''15A(k) gives'' and inserting ''15A(k), give''; and

(9) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking ''paragraph (1) subsection'' and inserting ''Paragraph (1)''.

(c) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking ''section 2 of such Act'' and inserting ''section 2(a) of such Act''; and

(2) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking '', in the'' and inserting ''in the''.

(d) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)), in the matter following subparagraph (B)(vii)—

(A) by striking ''clause (vi)'' each place that term appears and inserting ''clause (vii)''; and

(B) in each of subparagraphs (A)(vi) and (B)(vi), by adding and at the end of subclause (III);

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by adding ''or'' after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking ''any provision of this subsection'' and inserting ''any provision of this paragraph'';

(4) in section 17(f) (15 U.S.C. 80a–17(f))—

(A) in paragraph (4), by striking ''No such member'' and inserting ''No member of a national securities exchange''; and

(B) in paragraph (6), by striking ''company may serve'' and inserting ''company, may serve''; and

(5) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

(A) by striking ''paragraph (1) of section 205'' and inserting ''section 205(a)(1)''; and

(B) by striking ''clause (A) or (B) of that section'' and inserting ''paragraph (1) or (2) of section 205(b)''.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in section 203 (15 U.S.C. 80b–3)—

(A) in subsection (c)(1)(A), by striking ''principal business office and'' and inserting

"principal office, principal place of business, and"; and

(B) in subsection (k)(4)(B), in the matter following clause (ii), by striking "principal place of business" and inserting "principal office or place of business";

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by adding "or" after the semicolon at the end;

(3) in section 213(a) (15 U.S.C. 80b–13(a)), by striking "principal place of business" and inserting "principal office or place of business"; and

(4) in section 222 (15 U.S.C. 80b–18a), by striking "principal place of business" each place that term appears and inserting "principal office and place of business".

SEC. 986. CONFORMING AMENDMENTS RELATING TO REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),";

(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

"(7) DEFINITION.—For purposes of this subsection, the term 'emergency' means—

"(A) a major market disturbance characterized by or constituting—

"(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(ii) the transmission or processing of securities transactions."; and

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking ''section 18(c) of the Public Utility Holding Company Act of 1935,''.

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by striking paragraph (17) and inserting the following:

''(17) The terms 'Securities Act of 1933' and 'Securities Exchange Act of 1934' shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.'';

(2) in section 308 (15 U.S.C. 77hhh), by striking ''Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' each place that term appears and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934'';

(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c);

(4) in section 311 (15 U.S.C. 77kkk), by striking subsection (c);

(5) in section 323(b) (15 U.S.C. 77www(b)), by striking ''Securities Act of 1933, or the Securities

Exchange Act of 1934, or the Public Utility Holding Company Act of 1935'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''; and

(6) in section 326 (15 U.S.C. 77zzz), by striking ''Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,'' and inserting ''Securities Act of 1933 or the Securities Exchange Act of 1934''.

(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)), by striking '' 'Public Utility Holding Company Act of 1935','';

(2) in section 3(c) (15 U.S.C. 80a–3(c)), by striking paragraph (8) and inserting the following:

''(8) [Repealed]'';

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking ''the Public Utility Holding Company Act of 1935,''; and

(4) in section 50 (15 U.S.C. 80a–49), by striking ''the Public Utility Holding Company Act of 1935,''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a)(21) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(21)) is amended by striking "'Public Utility Holding Company Act of 1935',".

SEC. 987. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE DEPOSIT INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 38(k) of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended—

(1) in paragraph (2), by striking subparagraph (B) and inserting the following:

"(B) MATERIAL LOSS DEFINED.—The term 'material loss' means any estimated loss in excess of—

"(i) $100,000,000, if the loss occurs during the period beginning on September 30, 2009, and ending on December 31, 2010;

"(ii) $75,000,000, if the loss occurs during the period beginning on January 1, 2011, and ending on December 31, 2011; and

"(iii) $50,000,000, if the loss occurs on or after January 1, 2012.";

(2) in paragraph (4)(A) by striking ''the report'' and inserting ''any report on losses required under this subsection,'';

(3) by striking paragraph (6);

(4) by redesignating paragraph (5) as paragraph (6); and

(5) by inserting after paragraph (4) the following:

''(5) LOSSES THAT ARE NOT MATERIAL.—

''(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

''(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

''(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

''(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corpora-

tion as receiver under section 11(c)(5); and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

"(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to

the Federal banking agency and Congress.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of each Federal banking agency shall—

"(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for subsection (k) of section 38 of the Federal Deposit Insurance Act (U.S.C. 1831o(k)) is amended to read as follows:

"(k) REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.—".

SEC. 988. AMENDMENT TO DEFINITION OF MATERIAL LOSS AND NONMATERIAL LOSSES TO THE NATIONAL CREDIT UNION SHARE INSURANCE FUND FOR PURPOSES OF INSPECTOR GENERAL REVIEWS.

(a) IN GENERAL.—Section 216(j) of the Federal Credit Union Act (12 U.S.C. 1790d(j)) is amended to read as follows:

"(j) REVIEWS REQUIRED WHEN SHARE INSURANCE FUND EXPERIENCES LOSSES.—

"(1) IN GENERAL.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

"(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

"(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

"(ii) recommendations for preventing any such loss in the future; and

"(B) submit a copy of the report under subparagraph (A) to—

"(i) the Comptroller General of the United States;

"(ii) the Corporation;

"(iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and

"(iv) to any Member of Congress, upon request.

"(2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—

"(A) $25,000,000; and

"(B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.

"(3) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5) of title 5, United States Code; or

"(ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.

"(4) LOSSES THAT ARE NOT MATERIAL.—

"(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—

"(i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;

"(ii) for each loss to the Fund that is not a material loss, determine—

"(I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for

appointing the Board as the liquidating agent for any Federal or State credit union; and

"(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

"(iii) prepare and submit a written report to the Board and to the Congress on the results of the determinations of the Inspector General that includes—

"(I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines that no review is warranted, an explanation of such determination; and

"(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

"(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

"(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

"(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

"(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

"(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 8L of the Inspector General Act of 1978 (5 U.S.C. App.) with respect to each such report; and

"(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).".

SEC. 989. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON PROPRIETARY TRADING.

(a) DEFINITIONS.—In this section—

(1) the term ''covered entity'' means—

(A) an insured depository institution, an affiliate of an insured depository institution, a bank holding company, a financial holding company, or a subsidiary of a bank holding company or a financial holding company, as those terms are defined in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.); and

(B) any other entity, as the Comptroller General of the United States may determine; and

(2) the term ''proprietary trading'' means the act of a covered entity investing as a principal in securities, commodities, derivatives, hedge funds, private equity firms, or such other financial products or entities as the Comptroller General may determine.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding the risks and conflicts associated with proprietary trading by and within covered entities, including an evaluation of—

(A) whether proprietary trading presents a material systemic risk to the stability of the United States financial system, and if so, the costs and benefits of options for mitigating such systemic risk;

(B) whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities, and if so, the costs and benefits of options for mitigating such risks;

(C) whether proprietary trading present material conflicts of interest between covered entities that engage in proprietary trading and the clients of the institutions who use the firm to execute trades or who rely on the firm to manage assets, and if so, the costs and benefits of options for mitigating such conflicts of interest;

(D) whether adequate disclosure regarding the risks and conflicts of proprietary trading is provided to the depositors, trading and asset management clients, and investors of covered entities that engage in proprietary trading, and if not, the costs and benefits of options for the improvement of such disclosure; and

(E) whether the banking, securities, and commodities regulators of institutions that engage in proprietary trading have in place adequate systems and controls to monitor and contain any risks and conflicts of interest related to proprietary trading, and if not, the costs and benefits of options for the improvement of such systems and controls.

(2) CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Comptroller General shall consider—

(A) current practice relating to proprietary trading;

(B) the advisability of a complete ban on proprietary trading;

(C) limitations on the scope of activities that covered entities may engage in with respect to proprietary trading;

(D) the advisability of additional capital requirements for covered entities that engage in proprietary trading;

(E) enhanced restrictions on transactions between affiliates related to proprietary trading;

(F) enhanced accounting disclosures relating to proprietary trading;

(G) enhanced public disclosure relating to proprietary trading; and

(H) any other options the Comptroller General deems appropriate.

(c) REPORT TO CONGRESS.—Not later than 15 months after the date of enactment of this Act, the Comptroller General shall submit a report to Congress on the results of the study conducted under subsection (b).

(d) ACCESS BY COMPTROLLER GENERAL.—In accordance with section 716 of title 31, United States Code, and for purposes of conducting the study required under subsection (b), the Comptroller General shall have access, upon request, to any information, data, schedules, books, accounts, financial records, reports, files, electronic communications, or other papers, things, or property belonging to or in use by a covered entity that engages in proprietary trading, and to the officers, directors, employees, independent public accountants, financial advisors, staff, and agents and representatives of a covered entity (as related to the activities of the agent or representative on behalf of the covered entity), at such reasonable times as the Comptroller General may request. The Comptroller General may make and retain copies of books, records, accounts, and other records, as the Comptroller General deems appropriate.

(e) CONFIDENTIALITY OF REPORTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Comptroller General may not disclose information regarding—

(A) any proprietary trading activity of a covered entity, unless such information is disclosed at a level of generality that does not reveal the investment or trading position or strategy of the covered entity for any specific security, commodity, derivative, or other investment or financial product; or

(B) any individual interviewed by the Comptroller General for purposes of the study under subsection (b), unless such information is disclosed at a level of generality that does not reveal—

(i) the name of or identifying details relating to such individual; or

(ii) in the case of an individual who is an employee of a third party that provides professional services to a covered entity believed to be engaged in proprietary trading, the name of or any identifying details relating to such third party.

(2) EXCEPTIONS.—The Comptroller General may disclose the information described in paragraph (1)—

(A) to a department, agency, or official of the Federal Government, for official use, upon request;

(B) to a committee of Congress, upon request; and

(C) to a court, upon an order of such court.

SEC. 989A. SENIOR INVESTOR PROTECTIONS.

(a) DEFINITIONS.—As used in this section—

(1) the term ''misleading designation''—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) such credential has been offered by an academic institution having regional accreditation; or

(ii) such credential meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this section referred to as the ''NASAA'') Model Rule on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, adopted by the National Association of Insurance Commissioners, as in effect on the date of enactment of this Act, or any successor thereto, or it was issued by or obtained from any State;

(2) the term ''financial product'' means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products;

(3) the term ''misleading or fraudulent marketing'' means the use of a misleading designation in selling to or advising a senior in the sale of a financial product; and

(4) the term ''senior'' means any individual who has attained the age of 62 years or older.

(b) GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLED BY FALSE DES-

IGNATIONS.—The Office of Financial Literacy within the CFPA (in this section referred to as the ''Office'')—

(1) shall establish a program in accordance with this section to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this section as the Office determines are necessary to carry out and assess the effectiveness of the program under this section.

(c) USE OF GRANT AMOUNTS.—A grant under this section may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law that could offer additional protection for seniors against misleading or fraudulent marketing of financial products.

(d) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this section may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Office.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities

laws (as defined in section 3 of the Securities Exchange Act of 1934), as determined by the Office.

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Office.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities, notwithstanding any delayed effective date for such rules.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the

extent practicable (as determined by the Office), provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

(ii) that insurers and insurance producers are required to apply a standard for determining the suitability of each recommended annuity transaction, including fixed and index annuities, that is at least as protective of the interests of the consumer as rule 2821(b) of the Financial Industry Regulatory Authority (in this paragraph referred to as ''FINRA''), as in effect on the date of enactment of this Act, or any successor to such rule;

(iii) that insurers and insurance producers are required to maintain a process for review of the suitability, and approval or disapproval, of each recommended annuity transaction that is at least as protective of the interests of the consumer as the principal review required under rule 2821(c) of FINRA, as in effect on the date

of enactment of this Act, or any successor to such rule;

(iv) that insurers and insurance producers are required to maintain processes for the supervision of direct annuity sales and insurance producer-recommended annuity sales (including procedures for the insurer to obtain and confirm consumer suitability information and for the insurer to confirm consumer understanding of the annuity transaction) that are at least as protective of the interests of the consumer as member broker and dealer supervision requirements of FINRA, as in effect on the date of enactment of this Act, or any successor to such requirements;

(v) that insurers are required to verify that each insurance producer successfully completes, and each insurance producer is required to receive, training designed to ensure that the insurance producer is competent to recommend each class of annuity;

(vi) that insurers are required to verify that insurance producers receive, and insurance producers are required to

receive, training regarding the features of each offered annuity product, to an extent that is at least as protective of the interests of the consumer as the FINRA firm element training requirements, as in effect on the date of enactment of this Act, or any successor to such requirements;

(vii) for coordination of such rules with the rules of FINRA governing member brokers, dealers, and security representatives, to the extent appropriate, consistent with protecting the interests of consumers, for State insurance regulators to rely on, or to avoid duplication of FINRA rules; and

(viii) for exemption from such rules only if such exemption is consistent with the protection of consumers.

(e) ELIGIBLE ENTITIES.—The following State agencies shall be eligible to receive a grant under this section:

(1) A securities commission (or any agency or office performing like functions) of any State, which commission has adopted standard designation rules for securities, as described in subsection (d)(2) and

suitability rules for securities, as described in subsection (d)(3).

(2) The insurance commission (or any agency or office performing like functions) of any State, which commission has adopted standard designation rules for insurance products, as described in subsection (d)(2) and suitability and supervision rules for annuity products, as described in subsection (d)(5).

(3) Any State consumer protection agency, if either the securities commission or the insurance commission in that State has met the requirements of paragraph (1) or (2), as applicable.

(f) APPLICATIONS.—To be eligible for a grant under this section, the State or appropriate State agency shall submit to the Office a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

(g) LENGTH OF PARTICIPATION.—A State receiving a grant under this section shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $8,000,000 for each of the fiscal years 2010 through 2014.

Subtitle J—Self-funding of the Securities and Exchange Commission

SEC. 991. SECURITIES AND EXCHANGE COMMISSION SELF-FUNDING.

(a) SELF-FUNDING AUTHORITY.—Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended—

(1) in subsection (c), in the second sentence, by striking ''credited to the appropriated funds of the Commission'' and inserting ''deposited in the account described in subsection (j)(4)'';

(2) in subsection (f), in the second sentence, by striking ''considered a reimbursement to the appropriated funds of the Commission'' and inserting ''deposited in the account described in subsection (j)(4)''; and

(3) by adding at the end the following:

''(j) FUNDING OF THE COMMISSION.—

''(1) BUDGET.—For each fiscal year, the Chairman of the Commission shall prepare and submit to Congress a budget to Congress. Such budget shall be submitted at the same time the President submits a budget of the United States to Congress for such fiscal year. The budget submitted by the Chairman

of the Commission pursuant to this paragraph shall not be considered a request for appropriations.

"(2) TREASURY PAYMENT.—

"(A) On the first day of each fiscal year, the Treasury shall pay into the account described in paragraph (4) an amount equal to the budget submitted by the Chairman of the Commission pursuant to paragraph (1) for such fiscal year.

"(B) At or prior to the end of each fiscal year, the Commission shall pay to the Treasury from fees and assessments deposited in the account described in paragraph (4) an amount equal to the amount paid by the Treasury pursuant to subparagraph (A) for such fiscal year, unless there are not sufficient fees and assessments deposited in such account at or prior to the end of the fiscal year to make such payment, in which case the Commission shall make such payment in a subsequent fiscal year.

"(3) OBLIGATIONS AND EXPENSES.—

"(A) IN GENERAL.—The Commission shall determine and prescribe the manner in which—

"(i) the obligations of the Commission shall be incurred; and

"(ii) the disbursements and expenses of the Commission allowed and paid.

"(B) INSUFFICIENT FUNDS.—If, in the course of any fiscal year, the Chairman of the Commission determines that, due to unforeseen circumstances, the obligations of the Commission will exceed those provided for in the budget submitted under paragraph (1), the Chairman of the Commission may notify Congress of the amount and expected uses of the additional obligations.

"(C) AUTHORITY TO INCUR EXCESS OBLIGATIONS.—The Commission may incur obligations in excess of the budget submitted under paragraph (1) from amounts available in the account described in paragraph (4).

"(D) RULE OF CONSTRUCTION.—Any notification to Congress under this paragraph shall not be considered a request for appropriations.

"(4) ACCOUNT.—

"(A) ESTABLISHMENT.—Fees and assessments collected under this title, section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), and section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) and pay-

ments made by the Treasury pursuant to paragraph (2)(A) for any fiscal year shall be deposited into an account established at any regular Government depositary or any State or national bank.

"(B) RULE OF CONSTRUCTION.—Any amounts deposited into the account established under subparagraph (A) shall not be construed to be Government funds or appropriated monies.

"(C) NO APPORTIONMENT.—Any amounts deposited into the account established under subparagraph (A) shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

"(5) USE OF ACCOUNT FUNDS.—

"(A) PERMISSIBLE USES.—Amounts available in the account described in paragraph (4) may be withdrawn by the Commission and used for the purposes described in paragraphs (2) and (3).

"(B) IMPERMISSIBLE USE.—Except as provided in paragraph (6), no amounts available in the account described in paragraph (4) shall

be deposited and credited as general revenue of the Treasury.

"(6) EXCESS FUNDS.—If, at the end of any fiscal year and after all payments have been made to the Treasury pursuant to paragraph (2)(B) for such fiscal year and all prior fiscal years, the balance of the account described in paragraph (4) exceeds 25 percent of the budget of the Commission for the following fiscal year, the amount by which the balance exceeds 25 percent of such budget shall be credited as general revenue of the Treasury.".

(b) CONFORMING AMENDMENTS TO TRANSACTION FEE PROVISIONS.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) by amending subsection (a) to read as follows:

"(a) RECOVERY OF COSTS AND EXPENSES.—

"(1) IN GENERAL.—The Commission shall, in accordance with this section, collect transaction fees and assessments that are designed—

"(A) to recover the reasonable costs and expenses of the Commission, as set forth in the annual budget of the Commission; and

"(B) to provide funds necessary to maintain a reserve.

"(2) OVERPAYMENTS.—The authority to collect transaction fees and assessments in accordance with this section shall include the authority to offset from such collection any overpayment of transactions fees or assessments, regardless of the fiscal year in which such overpayment is made.";

(2) in subsection (e)(2), by striking "September 30" and inserting "September 25";

(3) in subsection (g), by striking "April 30" and inserting "August 31";

(4) by amending subsection (i) to read as follows:

"(i) FEE COLLECTIONS.—Fees and assessments collected pursuant to this section shall be deposited and credited in accordance with section 4(g) of this title.";

(5) by amending subsection (j) to read as follows:

"(j) ADJUSTMENTS TO TRANSACTION FEE RATES.—

"(1) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections

under this section (including assessments collected under subsection (d)) that are equal to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve.

"(2) MID-YEAR ADJUSTMENT.—For each fiscal year, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first 4 months of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, not later than March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section (including fees estimated to be collected under subsections (b) and (c) during such fiscal year prior to the effective date of the new uniform adjusted rate and assessments collected under subsection (d)) that are equal

to the budget of the Commission for such fiscal year, plus amounts necessary to maintain a reserve. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by paragraph (4).

"(3) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5 United States Code. An adjusted rate prescribed under paragraph (1) or (2) and published under subsection (g) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (1) shall take effect on the first day of the fiscal year to which such rate applies. An adjusted rate prescribed under paragraph (2) shall take effect on April 1 of the fiscal year to which such rate applies.

"(4) BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES.—For purposes of this subsection, the baseline estimate of the aggregate dollar amount of sales for any fiscal year is the baseline estimate of the aggregate dollar amount of sales of securities (other than bonds, debentures, other evidences of indebtedness, security futures

products, and options on securities indexes excluding a narrow-based security index)) to be transacted on each national securities exchange and by or through any member of each national securities association (otherwise than on a national securities exchange) during such fiscal year as determined by the Commission, after consultation with the Congressional Budget Office and the Office of Management and Budget, using the methodology required for making projections pursuant to section 907 of title 2.''; and

(6) by striking subsections (k) and (l).

(c) CONFORMING AMENDMENTS TO REGISTRATION FEE PROVISIONS.—

(1) SECTION 6(B) OF THE SECURITIES ACT OF 1933.—Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended—

(A) by striking ''offsetting'' each place that term appears and inserting ''fee'';

(B) in paragraph (3), in the paragraph heading, by striking ''OFFSETTING'' and inserting ''FEE'';

(C) in paragraph (11)(A), in the subparagraph heading, by striking ''OFFSETTING'' and inserting ''FEE'';

(D) by striking paragraphs (1), (3), (4), (6), (8), and (9);

(E) by redesignating paragraph (2) as paragraph (1);

(F) in paragraph (1), as so redesignated, by striking ''(5) or (6)'' and inserting ''(3)'';

(G) by inserting after paragraph (1), as so redesignated, the following:

''(2) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(j) of the Securities Exchange Act of 1934.'';

(H) by redesignating paragraph (5) as paragraph (3);

(I) in paragraph (3), as redesignated—

(i) by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year''; and

(ii) by striking ''paragraph (2)'' and inserting ''paragraph (1)'';

(J) by redesignating paragraph (7) as paragraph (4);

(K) by inserting after paragraph (4), as so redesignated, the following:

"(5) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (3) and published under paragraph (6) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (3) shall take effect on the first day of the fiscal year to which such rate applies.";

(L) by redesignating paragraphs (10) and (11), as paragraphs (6) and (7);

(M) in paragraph (6), as redesignated, by striking "April 30" and inserting "August 31"; and

(N) in paragraph (7), as redesignated—

(i) by striking "of the fiscal years 2002 through 2011" and inserting "fiscal year"; and

(ii) by inserting at the end of the table in subparagraph (A) the following:

2012 and each succeeding fiscal year	**An amount that is equal to the target offsetting collection amount for the prior fiscal year adjusted by the rate of inflation.**

(2) SECTION 13(E) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 13(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)) is amended—

(A) by striking ''offsetting'' each place that term appears and inserting ''fee'';

(B) in paragraph (3) by striking ''paragraphs (5) and (6)'' and inserting ''paragraph (5)'';

(C) by amending paragraph (4) to read as follows:

''(4) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.'';

(D) in paragraph (5), by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year'';

(E) by striking paragraphs (6), (7), and (8)

(F) by redesignating paragraph (7) as paragraph (6);

(G) by inserting after paragraph (6), as so redesignated, the following:

''(7) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Com-

mission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.'';

(H) by striking paragraph (9);

(I) by redesignating paragraph (10) as paragraph (8); and

(J) in paragraph (8), as so redesignated, by striking ''6(b)(10)'' and inserting ''6(b)(6)''.

(3) SECTION 14 OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)) is amended—

(A) by striking the word ''offsetting'' each time that it appears and inserting in its place the word ''fee'';

(B) in paragraph (1)(A), by striking ''paragraphs (5) and (6)'' each time it appears and inserting ''paragraph (5)'';

(C) in paragraph (3), by striking ''paragraphs (5) and (6)'' and inserting ''paragraph (5)'';

(D) by amending paragraph (4) to read as follows:

''(4) FEE COLLECTIONS.—Fees collected pursuant to this subsection shall be deposited and credited in accordance with section 4(g) of this title.'';

(E) in paragraph (5), by striking ''of the fiscal years 2003 through 2011'' and inserting ''fiscal year'';

(F) by striking paragraphs (6), (8), and (9);

(G) by redesignating paragraph (7) as paragraph (6);

(H) by inserting after paragraph (6), as so redesignated, the following:

''(7) REVIEW AND EFFECTIVE DATE.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5. An adjusted rate prescribed under paragraph (5) and published under paragraph (8) shall not be subject to judicial review. An adjusted rate prescribed under paragraph (5) shall take effect on the first day of the fiscal year to which such rate applies.'';

(I) by redesignating paragraphs (10) and (11) as paragraphs (8) and (9), respectively; and

(J) in paragraph (9), as so redesignated, by striking ''6(b)(10)'' and inserting ''6(b)(7)''.

(d) REPEAL OF AUTHORIZATION OF APPROPRIATIONS.—Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is repealed.

(e) CONFORMING AMENDMENT TO TITLE 2.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after ''Salaries of Article III judges;'' the following:

'' Securities and Exchange Commission: Salaries and Expenses (50-0100-0-1-376);''.

(f) EFFECTIVE DATE AND TRANSITION PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall be effective on the first day of the fiscal year following the fiscal year in which this Act is enacted.

(2) TRANSITION PERIOD.—For the fiscal year following the fiscal year in which this Act is enacted, the budget of the Commission shall be deemed to be

the budget submitted by the Chairman of the Commission to the President for such fiscal year in accordance with the provisions of section 1108 of title 31, United States Code.

(3) OTHER PROVISIONS.—The amendments made by this section to sections 31(g) and (j)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee (g) and (j)(1)) shall be effective on the date of enactment of this Act, and shall require the Commission to make and publish an annual adjustment to the fee rates applicable under sections 31(b) and (c) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee (b) and (c)) for the fiscal year following the fiscal year in which this Act is enacted. The adjusted rate described in the preceding sentence shall supersede any previously published adjusted rate applicable under sections 31 (b) and (c) of the Securities Exchange Act of 1934 for the fiscal year following the fiscal year in which this Act is enacted and shall take effect on the first day of the fiscal year following the fiscal year in which this Act is enacted, except that, if this Act is enacted on or after August 31 and on or prior to September 30, the adjusted rate described in the first sentence shall be published not later than 15 days after the date of

enactment of this Act and take effect 30 days thereafter, and the Commission shall continue to collect fees under sections 31 (b) and (c) of the Securities Exchange Act of 1934 at the rate in effect during the preceding fiscal year until the adjusted rate is effective.

TITLE X—CONSUMER FINANCIAL PROTECTION AGENCY ACT OF 2009

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Agency Act of 2009''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) APPOINTED BOARD MEMBER.—The term ''appointed Board member'' or ''appointed Board members'' means a member or members of the Board appointed by the President under section 1012(a)(1).

(3) BOARD.—The term ''Board'' means the board of directors of the Consumer Financial Protection Agency.

(4) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product or service to be used by a consumer primarily for personal, family, or household purposes.

(6) COVERED PERSON.—The term ''covered person'' means any person who engages, directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service.

(7) CREDIT.—The term ''credit'' means the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.

(8) CREDIT INSURANCE.—The term ''credit insurance'' means any insurance product or service related to, or provided in connection with, any extension of credit, and includes credit life insurance,

1 credit accident or health insurance, involuntary un-
2 employment insurance, and credit property insur-
3 ance.
4 (9) DEPOSIT-TAKING ACTIVITY.—
5 (A) IN GENERAL.—The term ''deposit-tak-
6 ing activity'' means—
7 (i) the acceptance of deposits, mainte-
8 nance of deposit accounts, or the provision
9 of services related to the acceptance of de-
10 posits or the maintenance of deposit ac-
11 counts;
12 (ii) the acceptance of money, the pro-
13 vision of other services related to the ac-
14 ceptance of money, or the maintenance of
15 member share accounts by a credit union;
16 and
17 (iii) the receipt of money or its equiv-
18 alent, as the CFPA may determine by rule
19 or order, received or held by a covered per-
20 son (or an agent for a covered person) for
21 the purpose of facilitating a payment or
22 transferring funds or value of funds by a
23 consumer to a third party.
24 (B) CFPA AUTHORITY.—For purposes of
25 this title, the CFPA may determine, by rule,

that the term ''deposit-taking activity'' includes the receipt of money or its equivalent in connection with the sale or issuance of any payment instrument or stored value product or service.

(10) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1062.

(11) DIRECTOR.—The term ''Director'' means the Director of the CFPA.

(12) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.);

(C) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(D) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(E) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(F) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(G) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sec-

tions 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(H) the Home Owners Protection Act of 1998 (12 U.S.C. 4901, et seq.);

(I) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(J) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(K) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(L) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(M) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(N) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(O) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(P) the Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(Q) the Truth in Savings Act (12 U.S.C. 4301 et seq.).

(13) FINANCIAL ACTIVITY.—The term ''financial activity'' means—

(A) engaging in deposit-taking activities;

(B) extending credit and servicing loans, including—

(i) acquiring, purchasing, selling, brokering, or servicing loans or other extensions of credit; and

(ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property and selling or servicing credit insurance or mortgage insurance;

(C) check cashing services or check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks tendered by the customers of the merchant in payment for goods and services; and

(ii) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored;

(D) collecting, analyzing, maintaining, furnishing, or providing consumer report informa-

tion or other account information, including information relating to the credit history of consumers;

(E) collecting debt related to any consumer financial product or service;

(F) providing real estate settlement services, including providing title insurance;

(G) leasing personal or real property or acting as agent, broker, or adviser in leasing such property, if—

(i) the lease is on a non-operating basis;

(ii) the initial term of the lease is at least 90 days; and

(iii) in the case of a lease involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the CFPA;

(H) acting as an investment adviser to any person (other than a person that is regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission or

any securities commission, or any agency or office performing like functions, of any State);

(I) acting as financial adviser to any person, including—

(i) providing financial and other related advisory services;

(ii) providing educational courses and instructional materials to consumers on individual financial management matters;

(iii) providing credit counseling, tax-planning, or tax-preparation services to any person (excluding the preparation of returns, or claims for refund, of tax imposed by the Internal Revenue Code of 1986, or advice with respect to positions taken therein, or services regulated by the Secretary under section 330 of title 31, United States Code); or

(iv) providing services to assist a consumer with—

(I) debt management or debt settlement;

(II) modifying the terms of any extension of credit; or

(III) avoiding foreclosure;

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

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

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

(iii) does not provide a material service to, or process a transaction on behalf of, any covered person in connection with the provision of a consumer financial product or service;

(K) money transmitting;

(L) selling or issuing stored value;

(M) acting as a money services business;

(N) acting as a custodian of money or any financial instrument; or

(O) engaging in any other activity that the CFPA defines, by rule, as a financial activity for purposes of this title, including an activity that is entered into or conducted as a subterfuge or with a purpose to evade any requirement of this title, the enumerated consumer laws, or the authorities transferred under subtitles F and H.

(14) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service'' means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(15) FOREIGN EXCHANGE.—The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(16) MONEY SERVICES BUSINESS.—The term ''money services business'' means a covered person that—

(A) receives currency, monetary value, or payment instruments for the purpose of ex-

changing or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(17) MONEY TRANSMITTING.—The term ''money transmitting'' means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(18) MORTGAGE INSURANCE.—The term ''mortgage insurance'' means insurance, including any mortgage guaranty insurance, against the nonpayment of, or any default on, an individual mortgage or loan involved in a residential mortgage transaction.

(19) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant,

money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(20) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any futures commission merchant, commodity trading adviser, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, but only to the extent that the person acts in such capacity.

(21) PERSON REGULATED BY THE COMMISSION.—The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is required to be registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934; and

(G) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (F), but only to the extent that the person, or the employee, agent, or contractor of such person, acts in a regulated capacity.

(22) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(23) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The terms ''provision of a consumer financial product or service'' and ''providing a consumer financial product or service'' mean the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(24) RELATED PERSON.—The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of this title, any enumerated consumer law, and any law for which

authorities were transferred by subtitles F and H; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility, or controlling stockholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the CFPA (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(25) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person who provides a material service to a covered person in connection with the provision of a consumer financial prod-

uct or service by a covered person, including a person who—

(i) facilitates the design of, or operations relating to the provision of, the consumer financial product or service;

(ii) has direct interaction with a consumer (whether in person or via a telecommunication device or other similar technology) regarding the consumer financial product or service; or

(iii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data that the person transmits or processes).

(B) EXCEPTIONS.—The term ''service provider'' does not include a person solely by virtue of such person providing or selling to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(26) STORED VALUE.—The term ''stored value'' means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

(27) TITLE INSURANCE.—The term ''title insurance'' means insurance issued by an insurance company or title company (as those terms are defined in section 2(4) of the Real Estate Settlements Procedures Act of 1974 (12 U.S.C. 2602(4)) that insures, guarantees, or indemnifies an owner of real property or the holder of a lien or encumbrance on the real property against loss or damage in connection with any defect in the title, lien, encumbrance, unmarketability of the title, or other non-record defect.

Subtitle A—The Consumer Financial Protection Agency

SEC. 1011. ESTABLISHMENT OF THE AGENCY.

(a) CFPA ESTABLISHED.—There is established the Consumer Financial Protection Agency, which shall be an independent establishment, as defined under section 104 of title 5, United States Code, and shall regulate the provision of consumer financial products or services under this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(b) PRINCIPAL OFFICE.—The principal office of the CFPA shall be located in the city of Washington, District of Columbia, at 1 or more sites.

SEC. 1012. BOARD OF DIRECTORS.

(a) COMPOSITION OF THE BOARD.—The management of the CFPA shall be vested in a board of directors that is composed of 5 members—

(1) 4 of whom shall be appointed by the President, by and with the advice and consent of the Senate—

(A) from among individuals who are citizens of the United States; and

(B) who have strong competencies and experiences related to consumer financial products or services; and

(2) the Director of FIRA.

(b) DIRECTOR OF THE CFPA.—From among the appointed Board members, the President shall designate 1 member of the Board to serve as the Director. The Director shall be the chief executive of the CFPA.

(c) TERMS OF APPOINTED BOARD MEMBERS.—

(1) IN GENERAL.—An appointed Board member, including the Director, shall serve for a term of 5 years.

(2) REMOVAL FOR CAUSE.—The President may remove any appointed Board member for inefficiency, neglect of duty, or malfeasance in office.

(3) VACANCIES.—Any member of the Board appointed to fill a vacancy occurring before the expiration of the term to which the predecessor of that member was appointed (including the Director) shall be appointed only for the remainder of the term.

(4) CONTINUATION OF SERVICE.—Each appointed Board member may continue to serve after the expiration of the term of office to which that member was appointed, until a successor has been appointed by the President and confirmed by the Senate.

(5) INITIAL APPOINTMENTS STAGGERED.—The appointed Board members (including the Director)

shall serve staggered terms, which initially shall be established by the President for terms of 2, 3, 4, and 5 years, respectively.

(d) COMPENSATION.—

(1) DIRECTOR.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(2) OTHER APPOINTED BOARD MEMBERS.—The 3 other appointed Board members shall each be compensated at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

SEC. 1013. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS.—The Board may exercise all executive and administrative functions of the CFPA, including—

(1) the establishment of rules for conducting the general business of the CFPA, in a manner not inconsistent with this title;

(2) to bind the CFPA and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the CFPA, in order to carry out the responsibilities of this title, the enumerated consumer laws, and the authorities

transferred under subtitles F and H, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the CFPA;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the CFPA, and the manner in which they shall be incurred, allowed, and paid;

(7) delegating authority, at the lawful discretion of the CFPA, to the Director or to a member of the Board or to any officer or employee of the CFPA to take action under any provision of this title or under other applicable law;

(8) implementing this title and the authorities of the CFPA under the enumerated consumer laws and under subtitles F and H through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(9) performing such other functions as may be authorized or required by law.

(b) TRANSACTING BUSINESS.—

(1) QUORUM.—Three members of the Board shall constitute a quorum for the transaction of

business, except that if only 3 members of the Board are serving because of vacancies, 2 members of the Board shall constitute a quorum for the transaction of business.

(2) VOTING.—Other than acts performed under delegated authority, the Board shall act through a majority vote of its members assembled.

SEC. 1014. ADMINISTRATION.

(a) OFFICERS.—The CFPA shall appoint—

(1) a secretary, who shall be charged with maintaining the records of the CFPA and performing such other activities as the Board directs;

(2) a general counsel, who shall be charged with overseeing the legal affairs of the CFPA and performing such other activities as the Board directs; and

(3) an inspector general, who shall have the authority and functions of an inspector general of a designated Federal entity under the Inspector General Act of 1978 (5 U.S.C. App. 3).

(b) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The CFPA may fix the number of, and appoint and direct, all employees of the CFPA.

(B) EXPEDITED HIRING.—During the 2-year period beginning on the date of enactment of this Act, the CFPA may appoint, without regard to the provisions of sections 3309 through 3318, of title 5, United States Code, candidates directly to positions for which public notice has been given.

(2) COMPENSATION.—

(A) PAY.—The CFPA shall fix, adjust, and administer the pay for all employees of the CFPA without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

(B) BENEFITS.—The CFPA may provide additional benefits to CFPA employees if the same type of benefits are then being provided by the Board of Governors or, if not then being provided, could be provided by the Board of Governors under applicable provisions of law.

(C) MINIMUM STANDARD.—The CFPA shall at all times provide compensation and benefits to each class of employees that, at a minimum, are equivalent to the compensation and benefits provided by the Board of Governors for

the corresponding class of employees in any fiscal year.

(c) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The CFPA shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(C) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services; and

(D) consumer behavior with respect to consumer financial products or services.

(2) COMMUNITY AFFAIRS.—The CFPA shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the provision of consumer financial products or services to traditionally underserved consumers and communities.

1 (3) CONSUMER COMPLAINTS.—
2 (A) IN GENERAL.—The CFPA shall estab-
3 lish a unit whose functions shall include estab-
4 lishing a central database for collecting and
5 tracking information on consumer complaints
6 about consumer financial products or services
7 and resolution of complaints.
8 (B) COORDINATION.—In performing the
9 functions described in subparagraph (A), the
10 CFPA shall coordinate with the Federal bank-
11 ing agencies, other Federal agencies, and other
12 regulatory agencies or enforcement authorities.
13 (4) DATA SHARING REQUIRED.—To the extent
14 permitted by law and the rules prescribed by the
15 CFPA regarding the confidential treatment of infor-
16 mation, the CFPA shall share data relating to con-
17 sumer complaints with Federal banking agencies,
18 other Federal agencies, and State regulators. To the
19 extent permitted by law and the regulations pre-
20 scribed by the Federal banking agencies and other
21 Federal agencies regarding the confidential treat-
22 ment of information, the Federal banking agencies
23 and other Federal agencies, respectively, shall share
24 data relating to consumer complaints with the
25 CFPA.

(d) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Director shall establish within the CFPA the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the CFPA, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending enforcement efforts of the CFPA with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community

advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the CFPA to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the CFPA for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director;

(B) shall carry out such duties as the Director may delegate to such Assistant Director; and

(C) shall serve as the Director of the Office of Fair Lending and Equal Opportunity.

SEC. 1015. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The CFPA shall establish a Consumer Advisory Board to advise and consult with the board of directors of the CFPA in the exercise of its functions under this title, the enumerated consumer laws, and to provide information on emerging practices in the consumer financial products or services industry.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the CFPA shall seek to

assemble experts in financial services, community development, fair lending, and consumer financial products or services and seek representation of the interests of covered persons and consumers.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the CFPA, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the CFPA while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1016. COORDINATION.

(a) COORDINATION WITH OTHER FEDERAL AGENCIES AND STATE REGULATORS.—The CFPA shall coordinate with the Commission, the Commodity Futures Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer and investment products and services.

(b) COORDINATION OF CONSUMER EDUCATION INITIATIVES.—

(1) IN GENERAL.—The CFPA shall coordinate with each agency that is a member of the Financial Literacy and Education Commission established under the Financial Literacy and Education Improvement Act (20 U.S.C. 9701 et seq.) to assist each agency in enhancing its financial literacy and education initiatives, to better achieve the goals enumerated under paragraph (2), and to ensure the consistency of such initiatives across Federal agencies.

(2) GOALS OF COORDINATION.—In coordinating with the agencies described in paragraph (1), the CFPA shall seek to improve efforts to educate consumers about financial matters generally, the management of their own financial affairs, and their judgments about the appropriateness of certain financial products.

SEC. 1017. REPORTS TO CONGRESS.

(a) REPORTS REQUIRED.—The CFPA shall prepare and submit to the President and to Congress a report at the beginning of each regular session of Congress, beginning with the session following the designated transfer date.

(b) CONTENTS.—The reports required by subsection (a) shall include—

(1) a list of the significant rules and orders adopted by the CFPA, as well as other significant initiatives conducted by the CFPA, during the preceding year and the plan of the CFPA for rules, orders, or other initiatives to be undertaken during the upcoming period;

(2) an analysis of complaints about consumer financial products or services that the CFPA has received and collected in its central database on complaints during the preceding year;

(3) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the CFPA is a party (including any adjudication proceedings conducted under subtitle E) during the preceding year;

(4) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions, including descriptions of the types of such covered persons, financial activities, and consumer financial products or services affected by such rules, orders, and supervisory actions;

(5) an appraisal of significant actions, including actions under Federal or State law, by State attorneys general or State regulators relating to this title, the authorities transferred to the CFPA under subtitles F and H, and the enumerated consumer laws; and

(6) an appraisal of the regulatory and legal difficulties encountered by the Agency in carrying out the mission and the duties of the Agency with respect to consumer protection, including a description of—

(A) the difficulties and hardships encountered with respect to coordinating with other Federal and State government entities;

(B) the regulatory and enforcement limitations placed on the Agency by this title;

(C) the practices of covered persons and others under this title, that allow such persons to harm consumers and escape regulation or enforcement, including any trends identified; and

(D) legislative and administrative recommendations with respect to solving or alleviating identified difficulties.

SEC. 1018. FUNDING; FEES AND ASSESSMENTS; PENALTIES AND FINES.

(a) FEES AND ASSESSMENTS.——

(1) IN GENERAL.—The CFPA shall assess fees on covered persons to recover the expenses of the CFPA for carrying out its duties and responsibilities, to the maximum extent possible. The CFPA shall assess fees on covered persons, as described in paragraph (3).

(2) RULEMAKING.—The CFPA shall prescribe rules to govern the imposition and collection of fees and assessments. Such rules shall specify and define—

(A) the basis of fees or assessments, such as—

(i) the outstanding volume of consumer credit accounts;

(ii) total assets under management;

(iii) volume of consumer financial transactions;

(iv) use of service providers; or

(v) the complexity of and risk posed by the covered person;

(B) the amount and frequency of fees or assessments; and

(C) such other factors as the CFPA determines appropriate.

(3) ASSESSMENTS ON COVERED PERSONS.—

(A) NONDEPOSITORY COVERED PERSONS.—The CFPA shall impose fees for the registration, examination, and supervision of covered persons that are not credit unions or depository institutions. To the maximum extent possible, fees assessed by the CFPA under this paragraph shall be established at levels necessary to recover the expenses of the CFPA for carrying out its duties and responsibilities, including supervising such covered persons. Registration fees imposed on a covered person under this paragraph shall, at a minimum, be imposed at the time at which the covered person registers (or periodically renews its registration) with the CFPA, in accordance with rules prescribed by the CFPA.

(B) INSURED DEPOSITORY INSTITUTIONS AND CREDIT UNIONS WITH ASSETS OF $10,000,000,000 OR GREATER.—The CFPA shall assess such fees as are appropriate on each credit union and insured depository institution which has total consolidated assets of

$10,000,000,000 or more, taking into account their size and complexity and risk that they pose. Fees assessed by the CFPA under this paragraph may be established at levels necessary to recover the expenses of the CFPA for carrying out its duties and responsibilities, including supervising such credit unions and insured depository institutions, taking into account such other sums as are available to the CFPA.

(C) FEDERALLY CHARTERED INSURED DEPOSITORY INSTITUTIONS AND FEDERAL CREDIT UNIONS WITH ASSETS OF LESS THAN $10,000,000,000.—

(i) IN GENERAL.—The CFPA may assess fees on each Federal credit union and federally chartered insured depository institution which has total consolidated assets of less than $10,000,000,000 as are appropriate, taking into account the size and complexity of and risk posed by the Federal credit union and insured depository institution. The CFPA and the agency responsible for chartering and supervising national banks, in consultation with State

banking supervisors, shall coordinate on the levels of fees assessed on Federal credit unions and federally chartered insured depository institutions under this paragraph.

(ii) PARITY WITH FEES ASSESSED ON STATE-CHARTERED INSTITUTIONS.—The CFPA may not assess fees under clause (i) that, when combined with the fees assessed on such insured depository institutions by the agency responsible for chartering and supervising national banks, exceed the average level of fees charged to State-chartered banks and State-chartered credit unions having total consolidated assets of less than $10,000,000,000. In establishing the fees assessed on federally chartered insured depository institutions under clause (i), the agencies may take into account variances in the levels of fees assessed on State-chartered banks and State-chartered credit unions, including variances among States.

(D) STATE-CHARTERED CREDIT UNIONS AND INSURED DEPOSITORY INSTITUTIONS WITH ASSETS OF LESS THAN $10,000,000,000.—The

CFPA may not assess fees on a State-chartered credit union or State-chartered insured depository institution which has total consolidated assets of less than $10,000,000,000.

(E) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(i) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the CFPA from the combined earnings of the Federal Reserve System the amount estimated by the CFPA needed to carry out the authorities granted in this title, under the enumerated consumer laws, and transferred under subtitles F and H, taking into account such other sums available to the CFPA for the following year (or quarter of such year), as requested by the CFPA.

(ii) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the CFPA the amount estimated by the Sec-

retary to needed to carry out the authorities granted to the Secretary under this title, under the enumerated consumer laws, and transferred under subtitles F and H, from the date of enactment of this Act until the designated transfer date.

(b) CONSUMER FINANCIAL PROTECTION AGENCY FUND.—

(1) SEPARATE FUND IN TREASURY ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the ''Consumer Financial Protection Agency Fund'' (referred to in this section as the ''CFPA Fund'').

(2) FUND RECEIPTS.—All amounts transferred to the CFPA under subsection (a), and all supervisory fees and assessments that the CFPA receives under subsection (b) shall be deposited into the CFPA Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN CFPA FUND MAY BE INVESTED.—The CFPA may request the Secretary to invest the portion of the CFPA Fund that is not, in the judgment of the CFPA, required to meet the current needs of the CFPA.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the CFPA Fund, as determined by the CFPA.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to the Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the CFPA Fund shall be immediately available to the CFPA, and shall remain available until expended, to pay the expenses of the CFPA in carrying out its duties and responsibilities. The compensation of the members of the Board and other employees of the CFPA and all other expenses thereof may be paid from assessments levied under this section.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the CFPA Fund shall not be con-

strued to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the CFPA Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Treasury of the United States a fund to be known as the ''Consumer Financial Protection Agency Civil Penalty Fund'' (referred to in this subsection as the ''Civil Penalty Fund''). If the CFPA obtains a civil penalty against any person in any judicial or administrative action under this title, the authorities transferred under subtitles F and H, or any enumerated consumer law, the CFPA shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the CFPA, without fiscal year limitation, for payments to the victims of activities for which civil penalties have

been imposed under this title, the authorities transferred under subtitles F and H, or any enumerated consumer law. To the extent such victims cannot be located or such payments are otherwise not practicable, the CFPA may use such funds for the purpose of consumer education and financial literacy programs.

SEC. 1019. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the CFPA

SEC. 1021. MANDATE AND OBJECTIVES.

(a) MANDATE.—The CFPA shall seek to promote transparency, simplicity, fairness, accountability, and access in the market for consumer financial products or services.

(b) OBJECTIVES.—The CFPA is authorized to exercise its authorities under this title, in the enumerated consumer laws, and transferred under subtitles F and H for the purposes of ensuring that—

(1) consumers have, understand, and can use the information they need to make responsible decisions about consumer financial products or services;

(2) consumers are protected from abuse, unfairness, deception, and discrimination;

(3) markets for consumer financial products or services operate fairly and efficiently, with ample room for sustainable growth and innovation; and

(4) consumers, including traditionally underserved consumers and communities have access to financial services.

SEC. 1022. AUTHORITIES.

(a) IN GENERAL.—The CFPA is authorized to exercise its authorities under this title, in the enumerated consumer laws, and transferred under subtitles F and H, to administer, enforce, and otherwise implement the provisions of this title, the enumerated consumer laws, and the authorities transferred under subtitles F and H.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The CFPA may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the CFPA to administer and carry out the purposes and objectives of this title, the authorities transferred under subtitles F and H, and the enumerated consumer laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under this title or pursuant to the

authorities transferred under subtitles F and H or the enumerated consumer laws, the CFPA shall—

(A) consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(B) consult with the Federal banking agencies, or other Federal agencies, as appropriate, regarding the consistency of a proposed rule with prudential, market, or systemic objectives administered by such agencies.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The CFPA, by rule, may conditionally or unconditionally exempt any covered person, service provider, or any consumer financial product or service or any class of covered persons, class of service providers, or consumer financial products or services, from any provision of this title, any enumerated consumer law, or from any rule thereunder, as the CFPA determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption by rule or order, as permitted under subparagraph (A), the CFPA shall, as appropriate, take into consideration—

(i) the total assets of the covered person;

(ii) the volume of transactions involving consumer financial products or services in which the covered person engages;

(iii) the extent to which the covered person engages in one or more financial activities; and

(iv) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(c) EXAMINATIONS AND REPORTS.—

(1) IN GENERAL.—The CFPA may, on a periodic basis, examine, or require reports from, a covered person or service provider in connection with the provision of any consumer financial product or service by a covered person, for purposes of ensuring compliance with the requirements of this title, the enumerated consumer laws, and any rules prescribed

by the CFPA thereunder or under the authorities transferred under subtitles F and H, and enforcing compliance with such requirements.

(2) RISK-BASED EXAMINATION PROGRAM.—The CFPA shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to covered persons, is made without regard to charter or corporate form, based on the assessment by the CFPA of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) in the case of State-chartered or licensed institutions, the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the CFPA determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the CFPA shall coordinate its supervisory activities with the supervisory activities conducted by the Federal banking agencies, the National Credit Union Administration, and the State bank regulatory authorities, including establishing their respective schedules for examining covered persons and requirements regarding reports to be submitted by covered persons.

(4) CONTENT OF REPORTS.—The CFPA may require any reports collected under paragraph (1) to include such information as necessary to keep the CFPA informed as to—

(A) the compliance systems or procedures of the covered person or any affiliate thereof, with applicable provisions of this title or any other provision of law that the CFPA has jurisdiction to enforce; and

(B) matters related to the provision of consumer financial products or services, including the servicing or maintenance of accounts or extensions of credit.

(5) USE OF EXISTING REPORTS.—The CFPA shall, to the fullest extent possible, use—

(A) reports pertaining to a covered person, or any service provider to such covered person that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(6) ACCESS BY THE CFPA TO REPORTS OF OTHER REGULATORS.—

(A) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the CFPA shall have access to any report of examination or financial condition made by a Federal banking agency or other Federal agency having supervisory authority over a covered person, and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO CFPA.—In addition to the reports described in subparagraph (A), a Federal banking agency may, in its discretion, furnish to the CFPA any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity exam-

ined by such agency under authority of any Federal law.

(7) ACCESS BY OTHER REGULATORS TO REPORTS OF THE CFPA.—

(A) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a Federal banking agency, a State regulator, or any other Federal agency having supervision of a covered person shall have access to any report of examination made by the CFPA with respect to the covered person or service provider, and to all revisions made to any such report.

(B) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in subparagraph (A), the CFPA may, in its discretion, furnish to a Federal banking agency any other report or other confidential supervisory information concerning any insured depository institution, any credit union, or other entity examined by the CFPA under the authority of any other provision of Federal law.

(8) PRESERVATION OF AUTHORITY.—Nothing in—

(A) paragraph (3) may be construed to prevent the CFPA from conducting an examination authorized by this title or under the authorities transferred under subtitles F and H or pursuant to any enumerated consumer law; and

(B) this title may be construed as limiting the authority of the Director to require reports from a covered person, as permitted under paragraph (1), regarding information owned or under the control of the covered person, regardless of whether such information is maintained, stored, or processed by another person.

(9) REPORTS OF TAX LAW NONCOMPLIANCE.—The CFPA shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Subject to subsection (f), but notwithstanding any other provision of Federal law, to the extent that a provision of Federal law authorizes the CFPA and another Federal agency to issue regulations or guidance, conduct examinations, or require reports under that provision of law for purposes of assuring compliance with this title, any enumerated consumer law, the laws for which

1 authorities were transferred under subtitles F and H, and
2 any regulations thereunder, the CFPA shall have the ex-
3 clusive authority to prescribe rules, issue guidance, con-
4 duct examinations, require reports, or issue exemptions
5 with regard to any person subject to those provisions of
6 law.

7 (e) PRIMARY ENFORCEMENT AUTHORITY.—

8 (1) THE CFPA TO HAVE PRIMARY ENFORCE-
9 MENT AUTHORITY.—To the extent that a provision
10 of Federal law authorizes enforcement by the CFPA
11 and another Federal agency, the CFPA shall have
12 primary authority to enforce that provision of Fed-
13 eral law with respect to any person in accordance
14 with this subsection.

15 (2) REFERRAL.—Any Federal agency author-
16 ized to enforce a provision of Federal law described
17 in paragraph (1) may recommend in writing to the
18 CFPA that the CFPA initiate an enforcement pro-
19 ceeding, as the CFPA is authorized by that provision
20 of Federal law or by this title. The recommendation
21 shall be accompanied by a written explanation of the
22 concerns giving rise to the recommendation.

23 (3) BACKSTOP ENFORCEMENT AUTHORITY OF
24 OTHER FEDERAL AGENCY.—If the CFPA does not,
25 before the end of the 120-day period beginning on

the date on which the CFPA receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(f) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A Federal banking agency and the CFPA shall, with respect to each insured depository institution, credit union, or other covered person supervised by the Federal banking agency and the CFPA, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, credit union, or other covered person;

(B) conduct simultaneous examinations of each insured depository institution, credit union, or other covered person, unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the

date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The CFPA shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) BANK REQUEST.—If the proposed supervisory determinations of the CFPA and a Federal banking agency (in this section referred to collectively as the ''agencies'') are conflicting, an insured depository institution, credit union, or other covered person may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person.

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, credit union, or other covered person may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the CFPA and a representative of the Federal banking agency, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who made the su-

pervisory determinations under appeal; and

(ii) a representative from the Federal banking agency that heads the Federal Financial Institution Examination Council, except as provided in subparagraph (C).

(C) SUBSTITUTE MEMBER.—If the Federal Financial Institutions Examination Council is headed by the Federal banking agency that has issued a conflicting material supervisory determination that is the subject of appeal under this paragraph, the Federal banking agency that is next scheduled to head the Federal Financial Institutions Examination Council shall appoint one of its employees as a member of the governing panel for that appeal.

(D) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, credit union, or other covered person—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear be-

fore the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, credit union, or other covered person, the CFPA, or the Federal banking agency to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, credit union, or other covered person may jointly agree.

(E) PUBLIC AVAILABILITY OF DETERMINATIONS.—A redacted copy of each determination of the governing panel under this paragraph shall be made public upon its issuance.

(F) PROHIBITION AGAINST RETALIATION.—The CFPA and the Federal banking agencies shall prescribe rules to provide safe-

guards from retaliation against the insured depository institution, credit union, or other covered person instituting an appeal under this paragraph, as well as their officers and employees.

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

(i) MATERIAL SUPERVISORY DETERMINATIONS.—The term ''material supervisory determinations''—

(I) includes those actions relating to supervision and examinations for which the FIRA, the CFPA, insured depository institution, credit union, or other covered person determines that conflict resolution would be appropriate; and

(II) does not include a determination by a Federal banking agency to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit In-

surance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as appropriate.

(ii) INDEPENDENT APPELLATE PROCESS.—The term ''independent appellate process'' means a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.

(H) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of an appropriate Federal banking agency or the CFPA to interpret, or take enforcement action under, any law or rule the interpretation or enforcement of which is committed to the agency or CFPA, which shall include, in the case of the CFPA, this title, the enumerated consumer laws, and the rules prescribed thereunder.

SEC. 1023. COLLECTION OF INFORMATION; CONFIDENTIALITY RULES.

(a) COLLECTION OF INFORMATION.—In conducting research on the provision of consumer financial products

or services, the CFPA shall have the power to gather information from time to time regarding the organization, business conduct, and practices of covered persons or service providers. In order to gather such information, the CFPA shall have the power—

(1) to gather and compile information;

(2) to require persons to file with the CFPA, in such form and within such reasonable period of time as the CFPA may prescribe, by rule or order, annual or special reports, or answers in writing to specific questions, furnishing information that the CFPA may require; and

(3) to make public such information obtained by the CFPA under this section as is in the public interest in reports or otherwise in the manner best suited for public information and use.

(b) CONFIDENTIALITY RULES.—The CFPA shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under this title and the enumerated consumer laws and the authorities transferred under subtitles F and H.

(c) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the CFPA, or requiring covered persons to publicly

report information, the CFPA shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

SEC. 1024. LIMITATIONS ON AUTHORITIES OF THE CFPA; PRESERVATION OF AUTHORITIES.

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

(1) IN GENERAL.—Except as permitted in paragraph (3), the CFPA may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service, but only to the extent that such person is engaged in the sale or brokerage of such nonfinancial good or service.

(2) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting paragraph (1) and except as permitted in paragraph (3), the CFPA may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, under this title with respect to a person that is licensed or registered as a real estate broker,

real estate agent, in accordance with State law, but only to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(3) DESCRIPTION OF ACTIVITIES.—Paragraphs (1) and (2) shall not apply to any person to the extent such person is engaged in any financial activity described in any subparagraph of section 1002(13) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

(b) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL SERVICES FOR CERTAIN CREDIT TRANSACTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (3), the CFPA may not exercise any supervisory or enforcement or other authority, including authority to order assessments, under this title with respect to—

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

(B) a merchant, retailer, or seller of a nonfinancial good or service who directly collects debt arising from such credit extended.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency with respect to credit extended, or the collection of debt arising from such extension, di-

rectly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(3) EXCLUSIONS NOT APPLICABLE TO CERTAIN CREDIT TRANSACTIONS OR ACTIVITIES.—Paragraph (1) shall not apply to—

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

(B) any credit transaction—

(i) in which the credit provided exceeds the market value of the nonfinancial good or service provided; or

(ii) with respect to which the CFPA finds that the sale of the nonfinancial good or service is done as a subterfuge so as to evade or circumvent the provisions of this title; or

(C) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is—

(i) subject to a finance charge; or

(ii) payable by written agreement in more than 4 installments.

(c) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the CFPA may not exercise any rulemaking, supervisory, enforcement or other authority, including authority to order assessments, over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting

activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to—

(A) any person described in paragraph (1)(A) to the extent such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is a financial activity described in any subparagraph of section 1002(13);

(B) any person described in paragraph (1)(B) to the extent such person is engaged in any activity which is a financial activity described in any subparagraph of section 1002(13); or

(C) any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any of the enumerated consumer laws or any law or authority transferred under subtitle F or H.

(d) EXCLUSION FOR QUALIFIED RETIREMENT OR ELIGIBLE DEFERRED COMPENSATION PLANS AND ARRANGEMENTS.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to—

(A) any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), 457(b), 408 or 408A of the Internal Revenue Code of 1986; or

(B) any educational savings arrangement under section 529 of such Code.

(2) LIMITATION ON CFPA AUTHORITY.—

(A) IN GENERAL.—Except as permitted in subsection (f), the CFPA may not exercise any

power to enforce this title with respect to services provided directly (or indirectly if the services relate to the operation of such plan or arrangement) to any retirement or eligible deferred compensation plan or arrangement qualified under or meeting the requirements of section 401(a), 403(a), 403(b), or 457(b) of the Internal Revenue Code of 1986.

(B) SERVICES DEFINED.—For purposes subparagraph (A), the term ''services'' means activities relating to the establishment or administration of a plan or arrangement, including the custody and investment of assets.

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

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the CFPA shall have no authority to

exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in any financial activity described in any subparagraph of section 1002(13) or is otherwise subject to any enumerated consumer law or any law or authority transferred under subtitle F or H.

(f) LIMITED AUTHORITY OF THE CFPA TO OBTAIN INFORMATION.—Notwithstanding subsections (a), (b), (c), (d), and (e), the CFPA may request or require information from any person subject to or described in such subsections in order to carry out the responsibilities and functions of the CFPA and in accordance with section 1023, 1051, or 1052.

(g) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commission or any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate

enforcement proceedings, or take any other action with respect to a person regulated by the Commission or any securities commission (or any agency or office performing like functions) of any State. The CFPA shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission or any securities commission (or any agency or office performing like functions) of any State.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate with the CFPA with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the CFPA under this title or under any other law.

(h) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a

person regulated by the Commodity Futures Trading Commission. The CFPA shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the CFPA with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the CFPA under this title or under any other law.

(i) INSURANCE.—

(1) IN GENERAL.—Except with respect to insurance activities described in section 1002, the CFPA may not define as a financial activity, by regulation or otherwise, engaging in the business of insurance.

(2) NO AUTHORITY TO ESTABLISH RATES OR PREMIUMS FOR COVERED INSURANCE ACTIVITIES.—Nothing in this title may be construed as conferring authority on the CFPA to approve or establish rates

or premiums with respect to an insurance product or service described in section 1002.

(j) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the CFPA to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(k) ATTORNEY GENERAL.—No provision of this title shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(l) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

SEC. 1025. MONITORING; ASSESSMENTS OF SIGNIFICANT RULES; REPORTS.

(a) MONITORING.—

(1) IN GENERAL.—The CFPA shall monitor for risks to consumers in the provision of consumer financial products or services, including developments in markets for such products or services.

(2) MEANS OF MONITORING.—Such monitoring may be conducted by examinations of covered per-

sons or service providers, analysis of reports obtained from covered persons or service providers, assessment of consumer complaints, surveys and interviews of covered persons and consumers, and review of available databases.

(3) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the CFPA may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the state of the law that applies to the provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers, if any; or

(F) the types, number, and other pertinent characteristics of covered persons that provide the product or service.

(4) REPORTS.—The CFPA shall publish at not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(b) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The CFPA shall conduct an assessment of each significant rule or order adopted by the CFPA under this title, the authorities transferred under subtitles F and H, or any enumerated consumer law that addresses, among other relevant factors, the effectiveness of the rule in meeting the purposes and objectives of this Act and the specific goals stated by the CFPA. The assessment shall reflect available evidence and any data that the CFPA reasonably may collect.

(2) REPORTS.—The CFPA shall publish a report of its assessment under this subsection not later than 3 years after the effective date of the rule or order, unless the CFPA determines that 3 years is not sufficient time to study or review the impact

of the rule, but in no event shall the CFPA publish such report more than 5 years after the effective date of the rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the CFPA shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

(c) INFORMATION GATHERING.—In conducting any monitoring or assessment required by this section, the CFPA may gather information through a variety of methods, including by conducting surveys or interviews of consumers.

SEC. 1026. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) IN GENERAL.—The CFPA, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the CFPA finds that such a prohibition or imposition of conditions or limitations are in the public interest and for the protection of consumers.

(b) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the CFPA

1 under subsection (a) shall apply, consistent with the terms
2 of the regulation, to any agreement between a consumer
3 and a covered person entered into after the end of the
4 180-day period beginning on the effective date of the regu-
5 lation, as established by the CFPA.

6 **SEC. 1027. SUPERVISION OF NONDEPOSITORY COVERED**
7 **PERSONS.**

8 (a) IN GENERAL.—The CFPA shall develop risk-
9 based programs to supervise covered persons that are not
10 credit unions or depository institutions by prescribing reg-
11 istration requirements, reporting requirements, and exam-
12 ination standards and procedures. The risk-based super-
13 visory programs, shall be based on—

14 (1) relevant registration and reporting informa-
15 tion about such covered persons, as determined by
16 the CFPA; and

17 (2) the assessment by the CFPA of risks posed
18 to consumers in the relevant geographic markets and
19 markets for consumer financial products and serv-
20 ices.

21 (b) REGISTRATION.—

22 (1) IN GENERAL.—The CFPA shall prescribe
23 rules regarding registration requirements for covered
24 persons that are not credit unions or depository in-
25 stitutions.

(2) CONSULTATION WITH STATE AGENCIES.—In developing and implementing registration requirements under this subsection, the CFPA shall consult with State agencies regarding requirements or systems for registration (including coordinated or combined systems), where appropriate.

(3) EXCEPTION FOR RELATED PERSONS.—The CFPA may not impose requirements under this section regarding the registration of a related person.

(4) REGISTRATION INFORMATION.—Subject to rules prescribed by the CFPA, the CFPA shall publicly disclose the registration information about a covered person which is not a bank holding company, credit union, or depository institution for the purpose of facilitating the ability of consumers to identify the covered person as registered with the CFPA.

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—The CFPA may require reports from covered persons that are not credit unions or depository institutions, or service providers thereto, for the purposes of facilitating supervision of such covered persons or service providers. The CFPA shall impose reporting requirements under this paragraph that are consistent with the risk-

based standards developed and implemented under this section and the registration information pertaining to the relevant types or classes of covered persons.

(2) CONTENTS OF REPORTS.—Reporting requirements imposed under this subsection may include information regarding—

(A) the nature of the business of the covered person;

(B) the name, legal form, ownership and management structure, and related persons of the covered person;

(C) the locations of operation of the covered person;

(D) the types and number of consumer financial products and services provided by the covered person;

(E) compliance with any requirement imposed or enforced by the CFPA, including any requirement relating to registration, licensing, fees, or assessments; and

(F) the financial condition of such covered person, including a related person, for the purpose of assessing the ability of such person to perform its obligation to consumers.

(3) EXCEPTION FOR RELATED PERSONS.—Other than reports permitted under paragraph (2)(F), or in connection with a supervisory action or examination, or pursuant to the powers granted under subtitle E, the CFPA may not impose requirements regarding reports of related persons.

(d) EXAMINATIONS.—The CFPA shall conduct examinations of covered persons that are not credit unions or depository institutions as part of the programs implemented under paragraphs (2) and (3) of section 1022(c). The CFPA shall establish risk-based standards and procedures for conducting examinations of such covered persons, including the frequency and scope of such examinations, except that the CFPA shall conduct examinations of such covered persons that are determined to pose the highest risk to consumers based on factors determined by the CFPA, such as the operations, sales practices, or consumer financial products or services provided by such covered persons.

(e) AUTHORITY TO COLLECT INFORMATION REGARDING FEES OR ASSESSMENTS.—To the extent permitted by Federal law, the CFPA may obtain from the Department of the Treasury information relating to a covered person which is not a bank holding company, credit union, or depository institution, including information regarding com-

pliance with a reporting or registration requirement under the Bank Secrecy Act, for the purpose of, and only to the extent necessary in, investigating, determining, or enforcing compliance with a requirement relating to any fee or assessment imposed by the CFPA under this title.

SEC. 1028. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle C—Specific CFPA Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The CFPA may take any action authorized under subtitle E to prevent a person from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) RULEMAKING.—The CFPA may prescribe rules identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules

1 under this section may include requirements for the pur-
2 pose of preventing such acts or practices.
3 (c) UNFAIRNESS.—
4 (1) IN GENERAL.—The CFPA shall have no au-
5 thority under this section to declare an act or prac-
6 tice in connection with a transaction with a con-
7 sumer for a consumer financial product or service,
8 or the offering of a consumer financial product or
9 service, to be unlawful on the grounds that such act
10 or practice is unfair, unless the CFPA has a reason-
11 able basis to conclude that—
12 (A) the act or practice causes or is likely
13 to cause substantial injury to consumers which
14 is not reasonably avoidable by consumers; and
15 (B) such substantial injury is not out-
16 weighed by countervailing benefits to consumers
17 or to competition.
18 (2) CONSIDERATION OF PUBLIC POLICIES.—In
19 determining whether an act or practice is unfair, the
20 CFPA may consider established public policies as
21 evidence to be considered with all other evidence.
22 (d) CONSULTATION.—In prescribing rules under this
23 section, the CFPA shall consult with the Federal banking
24 agencies, or other Federal agencies, as appropriate, con-
25 cerning the consistency of the proposed rule with pruden-

1 tial, market, or systemic objectives administered by such
2 agencies.

3 **SEC. 1032. DISCLOSURES.**

4 (a) IN GENERAL.—The CFPA may prescribe rules
5 to ensure the appropriate and effective disclosure to con-
6 sumers of the costs, benefits, and risks associated with
7 any consumer financial product or service.

8 (b) REASONABLE DISCLOSURES.—Subject to rules
9 prescribed by the CFPA, a covered person shall, with re-
10 spect to disclosures regarding any consumer financial
11 product or service, make or provide to a consumer disclo-
12 sures that reasonably communicate to consumers the
13 terms, costs, benefits, and risks of the product or service,
14 in light of all of the facts and circumstances.

15 (c) BASIS FOR RULEMAKING.—In prescribing rules
16 under this section, the CFPA shall consider available evi-
17 dence about consumer awareness, understanding of, and
18 responses to disclosures or communications about the
19 risks, costs, and benefits of consumer financial products
20 or services.

21 (d) COMBINED MORTGAGE LOAN DISCLOSURE.—Not
22 later than 1 year after the designated transfer date, the
23 CFPA shall propose for public comment rules and model
24 disclosures that combine the disclosures required under
25 the Truth in Lending Act and the Real Estate Settlement

1 Procedures Act of 1974 into a single, integrated disclosure
2 for mortgage loan transactions covered by those laws, un-
3 less the CFPA determines that any proposal issued by the
4 Board of Governors and the Secretary of Housing and
5 Urban Development carries out the same purpose.

6 **SEC. 1033. SALES PRACTICES.**

7 The CFPA may prescribe rules and issue orders and
8 guidance regarding the manner, settings, and cir-
9 cumstances for the provision of any consumer financial
10 product or service to ensure that the risks, costs, and ben-
11 efits of the products or services, both initially and over
12 the term of the products or services, are fully and accu-
13 rately represented to consumers.

14 **SEC. 1034. CONSUMER TESTING AND PILOT DISCLOSURES.**

15 (a) PILOT DISCLOSURES.—The CFPA shall establish
16 standards and procedures for approval of pilot disclosures
17 to be provided or made available by a covered person to
18 consumers in connection with the provision of a consumer
19 financial product or service for the purpose of improving
20 disclosures.

21 (b) REQUIREMENTS.—The standards and procedures
22 required by this section shall provide—

23 (1) that a pilot disclosure must be limited in
24 time and scope and reasonably designed to con-
25 tribute materially to the understanding of consumer

awareness and understanding of, and responses to, disclosures or communications about the risks, costs, and benefits of consumer financial products or services;

(2) that the pilot disclosure be reasonably likely to satisfy several or all of the criteria described in paragraph (1), based on testing with consumer focus groups or other appropriate testing methods; and

(3) for public disclosure of pilots, but the CFPA may limit disclosure to the extent necessary to encourage covered persons to conduct effective pilots.

SEC. 1035. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR, DECEPTIVE, OR ABUSIVE PRACTICES.

(a) STATE AUTHORITY TO PRESCRIBE STANDARDS.—The States are encouraged to prescribe standards applicable to covered persons who are not insured depository institutions, credit unions, or service providers, to deter and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services, including standards for—

(1) background checks for principals, officers, directors, or key personnel;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of the ability to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; and

(5) procedures and operations relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) CFPA AUTHORITY TO PRESCRIBE STANDARDS.—

(1) IN GENERAL.—The CFPA may prescribe rules establishing minimum standards described in subsection (a) for any class of covered persons, other than covered persons that are subject to the jurisdiction of a Federal banking agency or a State banking agency, or for any service provider.

(2) REGISTRATION AND LICENSING STANDARDS.—In addition to prescribing minimum standards for the purposes described in subsection (a), the CFPA may prescribe registration or licensing standards applicable to covered persons for the purposes of imposing fees or assessments in accordance with this title.

(3) ENFORCEMENT OF STANDARDS.—The CFPA may enforce under subtitle E compliance with

standards adopted by the CFPA or a State pursuant to this section for covered persons or service providers operating in that State.

(c) CONSULTATION.—In prescribing minimum standards under this section, the CFPA shall consult with the State authorities, the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such State authorities or such agencies.

SEC. 1036. DUTIES OF COVERED PERSONS.

(a) RULEMAKING REQUIRED.—The CFPA shall prescribe rules imposing duties on a covered person, or an employee of a covered person, or an agent or independent contractor for a covered person, who deals or communicates directly with consumers in the provision of a consumer financial product or service, as the CFPA determines appropriate or necessary to ensure fair dealing with consumers.

(b) CONSIDERATIONS FOR DUTIES.—In prescribing rules under this section, the CFPA shall consider whether—

(1) the covered person, employee, agent, or independent contractor represents implicitly or ex-

1 plicitly that it is acting in the interest of the con-
2 sumer with respect to any aspect of the transaction;
3 (2) the covered person, employee, agent, or
4 independent contractor provides the consumer with
5 advice with respect to any aspect of the transaction;
6 (3) use by the consumer of any advice from the
7 covered person, employee, agent, or independent con-
8 tractor would be reasonable and justifiable under the
9 circumstances;
10 (4) the benefits to consumers of imposing a
11 particular duty would outweigh the costs; and
12 (5) any other factors, as the CFPA considers
13 appropriate.
14 (c) DUTIES RELATING TO COMPENSATION PRAC-
15 TICES.—The CFPA may prescribe rules establishing du-
16 ties regarding compensation practices applicable to a cov-
17 ered person, employee, agent, or independent contractor
18 who deals or communicates directly with a consumer in
19 the provision of a consumer financial product or service
20 for the purpose of promoting fair dealing with consumers.
21 The CFPA may not prescribe a limit on the total dollar
22 amount of compensation paid to any covered person or af-
23 filiate thereof.
24 (d) ADMINISTRATIVE PROCEEDINGS.—Any rule pre-
25 scribed by the CFPA under this section shall be enforce-

able only by the CFPA through an adjudication proceeding under subtitle E or by a State regulator through an appropriate administrative proceeding, as permitted under State law. No action may be commenced in any court to enforce any requirement of a rule prescribed under this section, and no court may exercise supplemental jurisdiction over a claim asserted under a rule prescribed under this section based on allegations or evidence of conduct that otherwise may be subject to such rule. The CFPA, the Attorney General of the United States, or any State attorney general or State regulator shall not be precluded from enforcing any other provision of Federal or State law against a person with respect to conduct that may be subject to a rule prescribed by the CFPA under this section.

(e) EXCLUSIONS.—This section does not authorize the CFPA to prescribe rules applicable to—

(1) an attorney licensed to practice law and in compliance with the applicable rules and standards of professional conduct, but only to the extent that the consumer financial product or service provided is within the attorney-client relationship with the consumer; or

(2) any trustee, custodian, or other person that holds a fiduciary duty in connection with a trust, in-

cluding a fiduciary duty to a grantor or beneficiary of a trust, that is subject to and in compliance with the applicable law relating to such trust.

SEC. 1037. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the CFPA, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) EXCEPTIONS.—A covered person may not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other provision of law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The CFPA, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

(e) CONSULTATION.—The CFPA shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1038. PROHIBITED ACTS.

It shall be unlawful for any person—

(1) to advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee or charge in connection with a consumer financial product or service that is not in conformity with this title or applicable rules or orders issued by the CFPA or to engage in any unfair, deceptive, or abusive act or practice;

(2) to fail or refuse, as required by this title, an enumerated consumer law, or pursuant to the authorities transferred by subtitles F and H, or any rule or order issued by the CFPA thereunder—

(A) to pay any fee or assessment imposed by the CFPA under this title;

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

(C) to establish or maintain records; or

(D) to make reports or provide information to the CFPA; or

(3) knowingly or recklessly to provide substantial assistance to another person in violation of the

provisions of section 1031, or any rule or order issued under thereunder, and the provider of such substantial assistance shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

SEC. 1039. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For the purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title, if the protection that such statute, regula-

tion, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the CFPA on its own motion or in response to a non-frivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—Nothing in this title may be construed to modify, limit, or supersede the operation of any provision of an enumerated consumer law that relates to the application of State law with respect to such Federal law (except as provided in the amendments to the Alternative Mortgage Parity Act of 1982 made by subtitle H of this title).

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—Notwithstanding any other provision of this title—

(1) any State attorney general (or equivalent State regulator) may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States or State court having jurisdic-

tion over the defendant, to secure legal or equitable relief for violation of any provisions of this title or regulations issued thereunder; and

(2) nothing in this title may be construed to modify, limit, or supersede the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) PRIOR NOTICE.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any rule prescribed by the CFPA thereunder, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the CFPA, or the designee of the CFPA. If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the CFPA immediately upon instituting the action or proceeding.

(2) CONTENT OF NOTIFICATION.—The notification required under this section shall, at a minimum, describe—

(A) the identity of the parties;

(B) the alleged facts underlying the proceeding; and

(C) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the CFPA or another Federal agency.

(3) CFPA AUTHORITY.—In any action described in paragraph (1), the CFPA may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment to the same extent as any other party in the proceeding may.

(c) RULEMAKING REQUIRED.—The CFPA shall adopt rules to implement the requirements of this section and, from time to time, provide guidance in order to fur-

1 ther coordinate actions with the State attorneys general
2 and other State regulators.
3 (d) PRESERVATION OF STATE CLAIMS.—
4 (1) IN GENERAL.—Nothing in this title may be
5 construed as altering, limiting, or affecting the au-
6 thority of a State attorney general or State regulator
7 to bring an action or other regulatory proceeding
8 arising solely under the law of that State.
9 (2) STATE SECURITIES REGULATORS.—No pro-
10 vision of this title may be construed as altering, lim-
11 iting, or affecting the authority of a State securities
12 commission (or any agency or office performing like
13 functions) under State law to adopt rules, initiate
14 enforcement proceedings, or take any other action
15 with respect to a person regulated by such commis-
16 sion (or agency).
17 (3) STATE INSURANCE REGULATORS.—No pro-
18 vision of this title may be construed as altering, lim-
19 iting, or affecting the authority of a State insurance
20 commission or State insurance regulator under State
21 law to adopt rules, initiate enforcement proceedings,
22 or take any other action with respect to a person
23 regulated by such commission or regulator.

SEC. 1043. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter One of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

"(a) DEFINITIONS.—For purposes of this section, the term—

"(1) 'national bank' includes—

"(A) any bank organized under the laws of the United States;

"(B) any affiliate of a national bank;

"(C) any subsidiary of a national bank; and

"(D) any Federal branch established in accordance with the International Banking Act of 1978;

"(2) 'depository institution', 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act;

"(3) 'nondepository institution' means any entity that is not a depository institution;

"(4) 'FIRA' means the Financial Institutions Regulatory Administration; and

"(5) 'State consumer law' means any law of a State that—

"(A) accords rights to or protects the rights of its citizens or other persons in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

"(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts or practices with respect to such financial transactions.

"(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of Federal law, any consumer protection provision in a State consumer law of general application, including any law relating to unfair or deceptive acts or practices, any consumer fraud law, and repossession, foreclosure, and collection law, shall apply to any national bank.

1 "(2) EXCEPTIONS.—
2 "(A) IN GENERAL.—Paragraph (1) does
3 not apply with respect to any State consumer
4 law, if—
5 "(i) the State consumer law discrimi-
6 nates against national banks; or
7 "(ii) the State consumer law is incon-
8 sistent with provisions of Federal law other
9 than this title, but only to the extent of the
10 inconsistency (as determined in accordance
11 with the provision of the other Federal
12 law).
13 "(B) DETERMINATION OF INCONSIST-
14 ENCY.—For purposes of this paragraph, a State
15 consumer law is not inconsistent with Federal
16 law if the protection that the State consumer
17 law affords consumers is greater than the pro-
18 tection provided under Federal law, as deter-
19 mined by the CFPA.
20 "(c) STATE BANKING LAWS ENACTED PURSUANT TO
21 FEDERAL LAW.—
22 "(1) IN GENERAL.—Except as provided in para-
23 graph (2), and notwithstanding any other provision
24 of Federal law, each national bank shall be subject
25 to any State consumer law that—

"(A) is applicable to State banks; and

"(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act of 1974, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable provision of Federal law.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—Paragraph (1) does not apply with respect to any provision of State law, if—

"(i) the State consumer law discriminates against national banks; or

"(ii) the State consumer law is inconsistent with provisions of Federal law, other than this title, but only to the extent of the inconsistency (as determined in accordance with the other Federal law).

"(B) DETERMINATION OF INCONSISTENCY.—For purposes of this paragraph, a State consumer law is not inconsistent with Federal law if the protection that the State consumer

law affords consumers is greater than the protection provided under Federal law, as determined by the CFPA.

"(d) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section may be construed as altering or affecting the applicability to national banks of any provision of State law that is not described in this section.

"(e) EFFECT OF TRANSFER OF TRANSACTION.—A provision of State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a national bank subsequently acquires the asset or instrument that is the subject of the transaction.

"(f) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).".

(b) CLERICAL AMENDMENT.—The table of sections for chapter One of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

"5136C. State law preemption standards for national banks and subsidiaries clarified.".

SEC. 1044. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by section 1043 of this Act) is amended by inserting after subsection (i) (as added by section 1044) the following new subsection:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—No provision of this title shall be construed as annulling, altering, or affecting the applicability of State law to any nondepository institution or a subsidiary, other affiliate, or agent of a national bank.''.

SEC. 1045. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section—

''(1) 'depository institution', 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act;

"(2) 'nondepository institution' means any entity that is not a depository institution;

"(3) 'CFPA' means the Consumer Financial Protection Agency;

"(4) 'FIRA' means the Financial Institutions Regulatory Administration; and

"(5) 'State consumer law' means any law of a State that—

"(A) accords rights to or protects the rights of its citizens in financial transactions concerning negotiation, sales, solicitation, disclosure, terms and conditions, advice, and remedies; or

"(B) prevents counterparties, successors, and assigns of financial contracts from engaging in unfair or deceptive acts and practices.

"(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of Federal law, any consumer protection provision in a State consumer law of general application, including any law relating to unfair or deceptive acts or practices, any consumer fraud law and repossession,

1 foreclosure, and collection law, shall apply to any
2 Federal savings association.
3 "(2) EXCEPTIONS.—
4 "(A) IN GENERAL.—Paragraph (1) does
5 not apply with respect to any State consumer
6 law, if—
7 "(i) the State consumer law discrimi-
8 nates against Federal savings associations;
9 or
10 "(ii) the State consumer law is incon-
11 sistent with provisions of Federal law other
12 than this title, but only to the extent of the
13 inconsistency (as determined in accordance
14 with the provision of the other Federal
15 law).
16 "(B) DETERMINATION OF INCONSIST-
17 ENCY.—For purposes of this paragraph, a State
18 consumer law is not inconsistent with Federal
19 law if the protection that the State consumer
20 law affords consumers is greater than the pro-
21 tection provided under Federal law, as deter-
22 mined by the CFPA.
23 "(c) STATE BANKING OR THRIFT LAWS ENACTED
24 PURSUANT TO FEDERAL LAW.—

"(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of Federal law, each Federal savings association shall be subject to any State consumer law that—

"(A) is applicable to State savings associations (as that term is defined in section 3 of the Federal Deposit Insurance Act); and

"(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act of 1974, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law.

"(2) EXCEPTIONS.—

"(A) IN GENERAL.—Paragraph (1) does not apply with respect to any provision of State law, if—

"(i) the State consumer law discriminates against Federal savings associations; or

"(ii) the State consumer law is inconsistent with provisions of Federal law other than this title, but only to the extent of the

inconsistency (as determined in accordance with the provision of the other Federal law).

"(B) DETERMINATION OF INCONSISTENCY.—For this purposes of this paragraph, a State consumer law is not inconsistent with Federal law if the protection that the State consumer law affords consumers is greater than the protection provided under Federal law, as determined by the CFPA.

"(d) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section may be construed as altering or affecting the applicability to Federal savings associations, of any State law which is not described in this section.

"(e) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a Federal savings association subsequently acquires the asset or instrument that is the subject of the transaction.

"(f) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any Federal savings association shall not be treated as a right, privilege, or

1 immunity for purposes of section 1979 of the Revised
2 Statutes of the United States (42 U.S.C. 1983).''.
3 (b) CLERICAL AMENDMENT.—The table of sections
4 for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.)
5 is amended by striking the item relating to section 6 and
6 inserting the following new item:

''6. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

7 **SEC. 1046. VISITORIAL STANDARDS FOR NATIONAL BANKS**
8 **AND SAVINGS ASSOCIATIONS.**

9 (a) NATIONAL BANKS.—Section 5136C of the Re-
10 vised Statutes of the United States (as added by this sub-
11 title) is amended by adding at the end the following new
12 subsections:
13 ''(g) VISITORIAL POWERS.—
14 ''(1) IN GENERAL.—No provision of this title
15 which relates to visitorial powers or otherwise limits
16 or restricts the supervisory, examination, or regu-
17 latory authority to which any national bank is sub-
18 ject shall be construed as limiting or restricting the
19 authority of any attorney general (or other chief law
20 enforcement officer) of any State to bring any action
21 in any court of appropriate jurisdiction—
22 ''(A) to require a national bank to produce
23 records relative to the investigation of violations

of State consumer law, or Federal consumer laws;

''(B) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.

''(2) PRIOR CONSULTATION WITH FIRA REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with FIRA before acting under paragraph (1).

''(h) ENFORCEMENT ACTIONS.—The ability of FIRA to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following new subsections:

''(g) VISITORIAL POWERS.—

"(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

"(A) to require a Federal savings association to produce records relative to the investigation of violations of State consumer law, or Federal consumer laws;

"(B) to enforce any applicable provision of Federal or State law, as authorized by such law; or

"(C) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a Federal savings association, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any Federal savings association.

"(2) PRIOR CONSULTATION WITH FIRA REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with FIRA before acting under paragraph (1).

"(h) ENFORCEMENT ACTIONS.—The ability of FIRA to bring an enforcement action under this Act or section

5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

SEC. 1047. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 6 of the Home Owners' Loan Act (as added by section 1046 of this title) is amended by adding after subsection (i) (as added by section 1047) the following new subsection:

''(j) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF FEDERAL SAVINGS ASSOCIATIONS.—No provision of this title may be construed as preempting the applicability of State law to any nondepository institution or any subsidiary, other affiliate, or agent of a Federal savings association.''.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms ''civil investigative demand'' and ''demand'' mean any demand issued by the CFPA.

(2) CFPA INVESTIGATION.—The term ''CFPA investigation'' means any inquiry conducted by a CFPA investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(3) CFPA INVESTIGATOR.—The term ''CFPA investigator'' means any attorney or investigator employed by the CFPA who is charged with the duty of enforcing or carrying into effect any provisions of this title, any enumerated consumer law, the authorities transferred under subtitles F and H, or any rule or order promulgated thereunder by the CFPA.

(4) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the CFPA.

(5) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or of any rule or order prescribed by the CFPA thereunder.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The CFPA or, where appropriate, a CFPA investigator, may engage in joint investigations and requests for information.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations and requests for information with the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The CFPA or a CFPA investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(2) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the CFPA or a CFPA investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

(3) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the CFPA has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, the CFPA may, before the institution of any proceedings under this title or under any enumerated consumer law or pursuant to the authorities transferred under subtitles F and H, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the CFPA;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

(E) furnish any combination of such material, answers, or testimony.

(2) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within

which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a CFPA investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand and any enforcement petition filed under this section may be served—

(A) by any CFPA investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) to the extent that the courts of the United States have authority to assert jurisdiction over such person, consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(A) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at the principal office or place of business of such person.

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(B) RETURN RECEIPTS.—In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(10) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary mate-

rial required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(11) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(12) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person,

by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH OR AFFIRMATION.—Any CFPA investigator before whom oral testimony is to be taken shall put the witness under oath or affirmation, and shall personally, or by any individual acting under the direction of and in the presence of the CFPA investigator, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the CFPA investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any CFPA 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, the attorney of that person, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the CFPA investigator before whom the oral testimony of such person is to be taken and such person.

(D) ATTORNEY REPRESENTATION.—

(i) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(ii) AUTHORITY.—The attorney may advise a person described in clause (i), in confidence, either upon the request of such

1 person or upon the initiative of the attor-
2 ney, with respect to any question asked of
3 such person.
4 (iii) OBJECTIONS.—A person de-
5 scribed in clause (i), or the attorney for
6 that person, may object on the record to
7 any question, in whole or in part, and such
8 person shall briefly state for the record the
9 reason for the objection. An objection may
10 properly be made, received, and entered
11 upon the record when it is claimed that
12 such person is entitled to refuse to answer
13 the question on grounds of any constitu-
14 tional or other legal right or privilege, in-
15 cluding the privilege against self-incrimina-
16 tion, but such person shall not otherwise
17 object to or refuse to answer any question,
18 and such person or attorney shall not oth-
19 erwise interrupt the oral examination.
20 (iv) REFUSAL TO ANSWER.—If a per-
21 son described in clause (i) refuses to an-
22 swer any question—
23 (I) the CFPA may petition the
24 district court of the United States
25 pursuant to this section for an order

compelling such person to answer such question; and

(II) on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the CFPA investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the CFPA investigator, with a statement of the reasons given by the witness for making such changes;

(iv) the transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the CFPA investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) CERTIFICATION BY INVESTIGATOR.—The CFPA investigator shall certify on the transcript that the witness was duly sworn by him or her and that the transcript is a true record of the testimony given by the witness, and the CFPA investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) COPY OF TRANSCRIPT.—The CFPA investigator shall furnish a copy of the transcript (upon payment of reasonable charges for

the transcript) to the witness only, except that the CFPA may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the CFPA.

(2) DISCLOSURE TO CONGRESS.—No rule established by the CFPA regarding the confidentiality of materials submitted to, or otherwise obtained by, the CFPA shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the CFPA is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material

to the CFPA and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the CFPA, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(2) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(1) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time be-

fore the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any CFPA investigator named in the demand, such person may file with the CFPA a petition for an order by the CFPA modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the CFPA, shall not run during the pendency of a petition under paragraph (1) at the CFPA, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to

1 questions, or transcripts of oral testimony given by any
2 person in compliance with any civil investigative demand,
3 such person may file, in the district court of the United
4 States for the judicial district within which the office of
5 such custodian is situated, and serve upon such custodian,
6 a petition for an order of such court requiring the per-
7 formance by such custodian of any duty imposed upon him
8 by this section or rule promulgated by the CFPA.

9 (h) JURISDICTION OF COURT.—

10 (1) IN GENERAL.—Whenever any petition is
11 filed in any district court of the United States under
12 this section, such court shall have jurisdiction to
13 hear and determine the matter so presented, and to
14 enter such order or orders as may be required to
15 carry out the provisions of this section.

16 (2) APPEAL.—Any final order entered as de-
17 scribed in paragraph (1) shall be subject to appeal
18 pursuant to section 1291 of title 28, United States
19 Code.

20 **SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.**

21 (a) IN GENERAL.—The CFPA is authorized to con-
22 duct hearings and adjudication proceedings with respect
23 to any person in the manner prescribed by chapter 5 of
24 title 5, United States Code in order to ensure or enforce
25 compliance with—

(1) the provisions of this title, including any rules prescribed by the CFPA under this title; and

(2) any other Federal law that the CFPA is authorized to enforce, including an enumerated consumer law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the CFPA from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the CFPA, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the CFPA, the CFPA may issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine

whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the CFPA, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the CFPA finds that any violation specified in the notice of charges has been established, the CFPA may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and

to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the CFPA or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within 90 days after the CFPA has notified the parties that the case has been submitted to the CFPA for final decision, the CFPA shall render its decision (which shall include findings of fact upon which its decision

is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the CFPA may at any time, upon such notice and in such manner as the CFPA shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the CFPA may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the CFPA be modi-

fied, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the CFPA, and thereupon the CFPA shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the CFPA. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the CFPA.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the CFPA determines that the violation specified in the notice of

charges served upon a person, including a service provider, pursuant to subsection (b), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to subsection (b), the CFPA may issue a temporary order requiring the person to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the CFPA shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(2) APPEAL.—Not later than 10 days after the covered person or service provider concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district

1 court for the judicial district in which the residence
2 or principal office or place of business of the person
3 is located, or the United States District Court for
4 the District of Columbia, for an injunction setting
5 aside, limiting, or suspending the enforcement, oper-
6 ation, or effectiveness of such order pending the
7 completion of the administrative proceedings pursu-
8 ant to the notice of charges served upon the person
9 under subsection (b), and such court shall have ju-
10 risdiction to issue such injunction.

11 (3) INCOMPLETE OR INACCURATE RECORDS.—

12 (A) TEMPORARY ORDER.—If a notice of
13 charges served under subsection (b) specifies,
14 on the basis of particular facts and cir-
15 cumstances, that the books and records of a
16 covered person or service provider are so incom-
17 plete or inaccurate that the CFPA is unable to
18 determine the financial condition of that person
19 or the details or purpose of any transaction or
20 transactions that may have a material effect on
21 the financial condition of that person, the
22 CFPA may issue a temporary order requiring—

23 (i) the cessation of any activity or
24 practice which gave rise, whether in whole

or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the CFPA determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The CFPA may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(2) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(e) RULES.—The CFPA shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a provision of this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any rule or order prescribed by the CFPA thereunder, then the CFPA may commence a civil action

against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The CFPA may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the CFPA is a party.

(c) COMPROMISE OF ACTIONS.—The CFPA may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or any rule thereunder, the CFPA shall notify the Attorney General.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The CFPA may represent itself in its own name before the Supreme Court of the United States, provided that the CFPA makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the CFPA.

(f) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a state in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any enumerated consumer law, any law for which authorities were transferred under subtitles F and H, or rule or order of the CFPA thereunder.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—For purposes of this section, an action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) CFPA AUTHORITY.—In any action arising solely under an enumerated consumer law, the CFPA may commence, defend, or intervene in the action in accordance with the re-

quirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under the laws for which authorities were transferred by subtitles F and H, the CFPA may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the CFPA, as the case may be) in an action or adjudication proceeding brought under this title, any enumerated consumer law, or any law for which authorities were transferred by subtitles F and H, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title, any enumerated consumer law, and any law for which authorities were transferred by subtitles F and H, including a violation of a rule or order prescribed under this title, any enumerated consumer law and any law for which authorities were transferred by subtitles F and H.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the CFPA, a State attorney general, or any State regulator to enforce any provision of this title, any enumerated consumer law, any law for which authorities were transferred by subtitles F and H, or any rule or order pre-

1 scribed by the CFPA thereunder, the CFPA, the State at-
2 torney general, or the State regulator may recover its costs
3 in connection with prosecuting such action if the CFPA,
4 the State attorney general, or the State regulator is the
5 prevailing party in the action.

6 (c) CIVIL MONEY PENALTY IN COURT AND ADMINIS-
7 TRATIVE ACTIONS.—

8 (1) IN GENERAL.—Any person that violates,
9 through any act or omission, any provision of this
10 title, any enumerated consumer law, or any rule or
11 order prescribed under this title shall forfeit and pay
12 a civil penalty pursuant to this subsection.

13 (2) PENALTY AMOUNTS.—

14 (A) FIRST TIER.—For any violation of a
15 law, rule, or final order or condition imposed in
16 writing by the CFPA, or for any failure to pay
17 any fee or assessment imposed by the CFPA
18 (including any fee or assessment for which a re-
19 lated person may be liable), a civil penalty
20 under this subsection may not exceed $5,000
21 for each day during which such violation or fail-
22 ure to pay continues.

23 (B) SECOND TIER.—Notwithstanding
24 paragraph (A), for any violation of a rule pre-
25 scribed under section 1036 or for any person

that recklessly engages in a violation of this title, any enumerated consumer law, or any rule or order prescribed under this title, a civil penalty under this subsection may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates this title, any enumerated consumer law, or a rule or order prescribed under this title, a civil penalty under this subsection may not exceed $1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the CFPA or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The CFPA may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(5) NOTICE AND HEARING.—No civil penalty may be assessed under this subsection with respect to a violation of this title, any enumerated consumer law, or any rule or order prescribed by the CFPA, unless—

(A) the CFPA gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the CFPA.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the CFPA obtains evidence that any person, domestic or foreign, has engaged in conduct that may con-

1 stitute a violation of Federal criminal law, the CFPA shall
2 have the power to transmit such evidence to the Attorney
3 General of the United States, who may institute criminal
4 proceedings under appropriate law. Nothing in this section
5 affects any other authority of the CFPA to disclose infor-
6 mation.

7 **SEC. 1057. EMPLOYEE PROTECTION.**

8 (a) IN GENERAL.—No covered person or service pro-
9 vider shall terminate or in any other way discriminate
10 against, or cause to be terminated or discriminated
11 against, any covered employee or any authorized rep-
12 resentative of covered employees by reason of the fact that
13 such employee or representative, whether at the initiative
14 of the employee or in the ordinary course of the duties
15 of the employee (or any person acting pursuant to a re-
16 quest of the employee), has—

17 (1) provided information to the CFPA or to any
18 other State, local, or Federal, government authority
19 or law enforcement agency relating to any violation
20 of, or any act or omission that the employee reason-
21 ably believes to be a violation of, any provision of
22 this title or any other provision of law that is subject
23 to the jurisdiction of the CFPA, or any rule, order,
24 standard, or prohibition prescribed by the CFPA;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the CFPA, or any rule, order, standard, or prohibition prescribed by the CFPA;

(3) filed, instituted or caused to be filed or instituted any proceeding under any enumerated consumer law or any provision of law for which authorities were transferred by subtitles F and H; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the CFPA.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the provision of a financial product or service to a consumer.

(c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation

of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of —

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the com-

plaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of

Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor

that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor

shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

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

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

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

(iii) to provide compensatory damages to the complainant. If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complain-

ant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) DE NOVO REVIEW.—

(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the ap-

propriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) PROCEDURES.—A proceedings under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

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

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

(III) compensation for any special damages sustained as a result of the discharge or discrimination, in-

cluding litigation costs, expert witness fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness

fees) to any party, whenever the court determines such award is appropriate.

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

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (4), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to dis-

1 putes arising under subsection (a)(2), unless the
2 CFPA determines, by rule, that such provision is in-
3 consistent with the purposes of this Act.

4 **SEC. 1058. EFFECTIVE DATE.**

5 This subtitle shall become effective on the designated
6 transfer date.

7 Subtitle F—Transfer of Functions
8 and Personnel; Transitional
9 Provisions

10 **SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTEC-**
11 **TION FUNCTIONS.**

12 (a) DEFINED TERMS.—For purposes of this sub-
13 title—

14 (1) the term ''consumer financial protection
15 functions'' means research, rulemaking, issuance of
16 orders or guidance, supervision, examination, and
17 enforcement activities, powers, and duties relating to
18 the provision of consumer financial products or serv-
19 ices, including the authority to assess and collect
20 fees for those purposes; and

21 (2) the terms ''transferor agency'' and ''trans-
22 feror agencies'' mean, respectively—

23 (A) the Board of Governors (and any Fed-
24 eral reserve bank, as the context requires), the
25 Federal Deposit Insurance Corporation, the

Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the CFPA.

(B) BOARD OF GOVERNORS AUTHORITY.—The CFPA shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the

Comptroller of the Currency are transferred to the CFPA.

(B) COMPTROLLER AUTHORITY.—The CFPA shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the CFPA.

(B) DIRECTOR AUTHORITY.—The CFPA shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Fed-

eral Deposit Insurance Corporation are transferred to the CFPA.

(B) CORPORATION AUTHORITY.—The CFPA shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), all consumer financial protection functions of the Federal Trade Commission are transferred to the CFPA.

(B) COMMISSION AUTHORITY.—Except as provided in subparagraph (C), the CFPA shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(C) CONTINUATION OF CERTAIN COMMISSION AUTHORITIES.—Notwithstanding subparagraphs (A) and (B), the Federal Trade Commission shall continue to have authority to enforce, and issue rules with respect to—

(i) the Credit Repair Organizations Act (15 U.S.C. 1679 et seq.);

(ii) section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(iii) the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the CFPA.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The CFPA shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement

1 Procedures Act of 1974 (12 U.S.C. 2601 et
2 seq.) and the Secure and Fair Enforcement for
3 Mortgage Licensing Act of 2008 (12 U.S.C.
4 5102 et seq.) are transferred to the CFPA.
5 (B) DEPARTMENT OF HOUSING AND
6 URBAN DEVELOPMENT'S AUTHORITY.—The
7 CFPA shall have all powers and duties that
8 were vested in the Secretary of the Department
9 of Housing and Urban Development relating to
10 the Real Estate Settlement Procedures Act of
11 1974, and the Secure and Fair Enforcement for
12 Mortgage Licensing Act of 2008, on the day be-
13 fore the designated transfer date.
14 (c) TRANSFERS OF FUNCTIONS SUBJECT TO BACK-
15 STOP ENFORCEMENT AUTHORITY REMAINING WITH
16 TRANSFEROR AGENCIES.—The transfers of functions in
17 subsection (b) do not affect the authority of the agencies
18 identified in subsection (b) from initiating enforcement
19 proceedings under the circumstances described in section
20 1022(e)(3).
21 (d) TERMINATION OF AUTHORITY OF TRANSFEROR
22 AGENCIES TO COLLECT FEES FOR CONSUMER FINAN-
23 CIAL PROTECTION PURPOSES.—Authorities of the agen-
24 cies identified in subsection (b) to assess and collect fees
25 to cover the cost of conducting consumer financial protec-

tion functions shall terminate on the day before the designated transfer date.

(e) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the CFPA under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of

the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the CFPA by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date

with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the CFPA by this title, except that the CFPA shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the CFPA by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to

any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the CFPA by this title, except that the CFPA shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the CFPA by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the CFPA by this

1 title, except that the CFPA shall be substituted for
2 the Federal Trade Commission as a party to any
3 such proceeding as of the designated transfer date.
4 (d) NATIONAL CREDIT UNION ADMINISTRATION.—
5 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
6 TIONS NOT AFFECTED.—Section 1061(b)(6) does
7 not affect the validity of any right, duty, or obliga-
8 tion of the United States, the National Credit Union
9 Administration, the National Credit Union Adminis-
10 tration Board, or any other person, that—
11 (A) arises under any provision of law relat-
12 ing to any consumer financial protection func-
13 tion of the National Credit Union Administra-
14 tion transferred to the CFPA by this title; and
15 (B) existed on the day before the des-
16 ignated transfer date.
17 (2) CONTINUATION OF SUITS.—No provision of
18 this Act shall abate any proceeding commenced by
19 or against the National Credit Union Administration
20 (or the National Credit Union Administration
21 Board) before the designated transfer date with re-
22 spect to any consumer financial protection function
23 of the National Credit Union Administration trans-
24 ferred to the CFPA by this title, except that the
25 CFPA shall be substituted for the National Credit

Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the CFPA by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the CFPA by this title before the designated transfer date, except that the CFPA shall be substituted

for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the CFPA by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the CFPA by this title before

the designated transfer date, except that the CFPA shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) or the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) transferred to the CFPA by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against

the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the CFPA by this title before the designated transfer date, except that the CFPA shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the CFPA.

(i) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the CFPA—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (g) that will be enforced by the CFPA; and

(2) shall publish a list of such rules in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not published as a final rule before that date, shall be deemed to be a proposed rule of the CFPA.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the CFPA according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The CFPA and the Board of Governors shall—

(i) jointly determine the number of employees of the Board necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the CFPA by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the CFPA, in a manner that the CFPA and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the CFPA for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank

who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The CFPA and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the CFPA by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the CFPA, in a manner that the CFPA and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the CFPA for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The CFPA and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the CFPA by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the CFPA, in a manner that the CFPA and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit

Union Administration identified under subparagraph (A)(ii) shall be transferred to the CFPA for employment.

(4) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The CFPA and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the CFPA by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the CFPA in a manner that the CFPA and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the CFPA for employment.

(5) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Execu-

tive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Na-

tional Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the CFPA with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the CFPA from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the CFPA are not subject to any additional certification requirements before

being placed in a comparable examiner position at the CFPA examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her local locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the CFPA—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the CFPA determines that the reassignment is necessary for the efficient operation of the CFPA.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the 2-year period immediately before the transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the CFPA to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the CFPA.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the CFPA to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the CFPA determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the CFPA is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the CFPA shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same local-

ity pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the CFPA as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve

bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the CFPA determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the CFPA is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the CFPA shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administra-

tion shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the CFPA.

(ii) EMPLOYER CONTRIBUTION.—The CFPA shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day

before his or her transfer to the CFPA may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) CFPA PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—A separate account in the Federal Reserve System retirement plan shall be established for CFPA employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve Sys-

tem retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The CFPA shall deposit into the account established under clause (i) the employer contributions that the CFPA makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The CFPA shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and

any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The CFPA shall reimburse the agency or bank

from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the CFPA decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the CFPA takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; or

(iii) the Federal Employees Group Life Insurance Program established by

chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the CFPA decides not to continue participation in any long term care insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the CFPA takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The CFPA shall transfer to the Federal Employees Health Benefits Fund established under section 8909

of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the CFPA and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible

for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the CFPA, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The CFPA shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the CFPA and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred

under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the CFPA shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the CFPA—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the

1 Comptroller of the Currency, the Office of Thrift
2 Supervision, a Federal reserve bank, a Federal home
3 loan bank, or a joint office of the Federal home loan
4 banks; and
5 (2) may take such action as is appropriate in
6 individual cases so that employees transferred under
7 this section receive equitable treatment, with respect
8 to the status, tenure, pay, benefits (other than bene-
9 fits under programs administered by the Office of
10 Personnel Management), and accrued leave or vaca-
11 tion time of those employees, for prior periods of
12 service with any Federal agency, including the
13 Board of Governors of the Federal Reserve System,
14 the Federal Deposit Insurance Corporation, the Fed-
15 eral Trade Commission, the National Credit Union
16 Administration, the Office of the Comptroller of the
17 Currency, the Office of Thrift Supervision, a Federal
18 reserve bank, a Federal home loan bank, or a joint
19 office of the Federal home loan banks.
20 (l) IMPLEMENTATION.—In implementing the provi-
21 sions of this section, the CFPA shall coordinate with the
22 Office of Personnel Management and other entities having
23 expertise in matters related to employment to ensure a
24 fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the CFPA under this subtitle until 3 of the appointed Board members are confirmed by the Senate in accordance with section 1012.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the CFPA before the designated transfer date.

(c) INTERIM FUNDING FOR THE DEPARTMENT OF THE TREASURY.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of the Treasury such sums as are necessary to carry out this section.

(2) APPORTIONMENT AND RESTRICTIONS.—Notwithstanding any other provision of law, amounts appropriated under paragraph (1) shall be subject to apportionment under section 1517 of title 31, United States Code, and restrictions that generally apply to the use of appropriated funds in title 31, United States Code, and other laws.

Subtitle G—Regulatory Improvements

SEC. 1071. COLLECTION OF DEPOSIT ACCOUNT DATA.

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain a record of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—Customer addresses shall be geo-coded for the collection of data regarding the census tracts of the residences or business locations of customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—Each financial institution shall make publicly available on an annual basis, from information collected under this section—

(i) the address and census tract of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to the financial institution;

(ii) the type of deposit account, including whether the account was a checking or savings account; and

(iii) data on the number and dollar amount of the accounts, presented by cen-

sus tract location of the residential and commercial customer.

(B) PROTECTION OF IDENTITY.—In making date publicly available, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the CFPA, or to a Federal banking agency, in accordance with rules prescribed by the CFPA.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under rules prescribed by the CFPA.

(d) CFPA USE.—The CFPA—

(1) shall use the data on branches and deposit accounts acquired under this section as part of the examination of a financial institution under the Community Reinvestment Act of 1977;

(2) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(3) may use the data for any other purpose as permitted by law.

(e) RULES AND GUIDANCE.—The CFPA shall prescribe such rules and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section. The CFPA shall prescribe rules regarding the provision of data compiled under this section to the Federal banking agencies to carry out the purposes of this section, and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of rules prescribed thereunder.

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

(1) DEPOSIT ACCOUNT.—The term ''deposit account'' includes any checking account, savings account, credit union share account, and other type of account as defined by the CFPA.

(2) FINANCIAL INSTITUTION.—The term ''financial institution''—

(A) has the meaning given to the term ''insured depository institution'' in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

(g) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1072. SMALL BUSINESS DATA COLLECTION.

(a) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704A the following new section:

''SEC. 740B. SMALL BUSINESS LOAN DATA COLLECTION.

''(a) PURPOSE.—The purpose of this section is to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned and minority-owned small businesses.

''(b) IN GENERAL.—Subject to the requirements of this section, in the case of any application to a financial institution for credit for a small business, the financial institution shall—

''(1) inquire whether the small business is a women- or minority-owned small business, without regard to whether such application is received in person, by mail, by telephone, by electronic mail or

other form of electronic transmission, or by any other means, and whether or not such application is in response to a solicitation by the financial institution; and

''(2) maintain a record of the responses to such inquiry, separate from the application and accompanying information.

''(c) RIGHT TO REFUSE.—Any applicant for credit may refuse to provide any information requested pursuant to subsection (b) in connection with any application for credit.

''(d) NO ACCESS BY UNDERWRITERS.—

''(1) LIMITATION.—Where feasible, no loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for credit shall have access to any information provided by the applicant pursuant to a request under subsection (b) in connection with such application.

''(2) LIMITED ACCESS.—If a financial institution determines that loan underwriter or other officer or employee of a financial institution, or any affiliate of a financial institution, involved in making any determination concerning an application for

1 credit should have access to any information pro-
2 vided by the applicant pursuant to a request under
3 subsection (b), the financial institution shall provide
4 notice to the applicant of the access of the under-
5 writer to such information, along with notice that
6 the financial institution may not discriminate on this
7 basis of such information.
8 ''(e) FORM AND MANNER OF INFORMATION.—
9 ''(1) IN GENERAL.—Each financial institution
10 shall compile and maintain, in accordance with regu-
11 lations of the CFPA, a record of the information
12 provided by any loan applicant pursuant to a request
13 under subsection (b).
14 ''(2) ITEMIZATION.—Information compiled and
15 maintained under paragraph (1) shall be itemized in
16 order to clearly and conspicuously disclose, to the ex-
17 tent available—
18 ''(A) the number of the application and the
19 date on which the application was received;
20 ''(B) the type and purpose of the loan or
21 other credit being applied for;
22 ''(C) the amount of the credit or credit
23 limit applied for, and the amount of the credit
24 transaction or the credit limit approved for such
25 applicant;

"(D) the type of action taken with respect to such application, and the date of such action;

"(E) the census tract in which is located the principal place of business of the small business loan applicant;

"(F) the gross annual revenue of the business in the last fiscal year of the small business loan applicant preceding the date of the application;

"(G) the race and ethnicity of the principal owners of the business; and

"(H) any additional data that the CFPA determines would aid in fulfilling the purposes of this section.

"(3) NO PERSONALLY IDENTIFIABLE INFORMATION.—In compiling and maintaining any record of information under this section, a financial institution may not include in such record the name, specific address (other than the census tract required under paragraph (1)(E)), telephone number, electronic mail address, or any other personally identifiable information concerning any individual who is, or is connected with, the small business loan applicant.

"(4) DISCRETION TO DELETE OR MODIFY PUBLICLY-AVAILABLE DATA.—The CFPA may, at its

discretion, delete or modify data collected under this section which is or will be available to the public, if the CFPA determines that the deletion or modification of the data would advance a compelling privacy interest.

''(f) AVAILABILITY OF INFORMATION.—

''(1) SUBMISSION TO CFPA.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the CFPA.

''(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be—

''(A) retained for not less than 3 years after the date of preparation;

''(B) made available to the any member of the public, upon request, in the form required under regulations prescribed by the CFPA;

''(C) annually made available to the public generally by the CFPA, in such form and in such manner as is determined appropriate by the CFPA.

''(3) COMPILATION OF AGGREGATE DATA.—The CFPA may, at its discretion—

"(A) compile and aggregate data collected under this section for its own use; and

"(B) make public such compilations of aggregate data.

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

"(1) FINANCIAL INSTITUTION.—The term 'financial institution' means any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity.

"(2) MINORITY-OWNED SMALL BUSINESS.—The term 'minority-owned small business' means a small business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(3) WOMEN-OWNED SMALL BUSINESS.—The term 'women-owned small business' means a business—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more women; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women.

"(4) MINORITY.—The term 'minority' has the same meaning as in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"(5) SMALL BUSINESS LOAN.—The term 'small business loan' shall be defined by the CFPA, which may take into account—

"(A) the gross revenues of the borrower;

"(B) the total number of employees of the borrower;

"(C) the industry in which the borrower has its primary operations; and

"(D) the size of the loan.

"(h) CFPA ACTION.—

"(1) IN GENERAL.—The CFPA shall prescribe such rules and issue such guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

"(2) EXCEPTIONS.—The CFPA, by rule or order, may adopt exceptions to any requirement of

this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the CFPA deems necessary or appropriate to carry out the purposes of this section.

''(3) GUIDANCE.—The CFPA shall issue guidance designed to facilitate compliance with the requirements of this section, including assisting financial institutions in working with applicants to determine whether the applicants are women- or minority-owned for purposes of this section.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by striking ''or'' at the end;

(2) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (4), the following:

''(5) to make an inquiry under section 704B, in accordance with the requirements of that section.''.

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is

amended by inserting after the item relating to section 704A the following new item:

"704B. Small business loan data collection.".

(d) EFFECTIVE DATE.—This section shall become effective on the designated transfer date.

SEC. 1073. OFFICE OF FINANCIAL LITERACY.

(a) ESTABLISHMENT.—The CFPA shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(b) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Education, through activities including providing opportunities for consumers to access—

(1) financial counseling;

(2) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(3) savings, borrowing, and other services found at mainstream financial institutions;

(4) activities intended to—

(A) prepare for educational expenses and the submission of financial aid applications, and other major purchases;

(B) reduce debt; and

(C) improve the financial situation of the consumer;

(5) assistance in developing long-term savings strategies; and

(6) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(c) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the CFPA in carrying out its functions, including—

(1) working with the Community Affairs Office to implement the strategy to improve financial literary of consumers; and

(2) working with the research unit established by the CFPA to conduct research related to consumer financial education and counseling.

(d) REPORT.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the CFPA shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

(e) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(1) in subparagraph (B), by striking "'and'" at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) the Director of the Consumer Financial Protection Agency; and".

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended by inserting "the Consumer Financial Protection Agency," before "the Consumer Product Safety Commission,".

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

''(w) APPLICABILITY TO CONSUMER FINANCIAL PROTECTION AGENCY.—Except as provided in the Consumer Financial Protection Agency Act of 2009, this section shall apply with respect to the Consumer Financial Protection Agency.''.

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking ''1974'' and all that follows through ''described and defined'' and inserting the following: ''1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined''; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after ''transactions made'' each place that term appears ''on or before the designated transfer date, as deter-

mined under section 1062 of the Consumer Financial Protection Agency Act of 2009,'';

(ii) in paragraph (2), by striking ''and'' at the end;

(iii) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following new paragraph:

''(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Consumer Financial Protection Agency for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Consumer Financial Protection Agency with regard to federally chartered housing creditors under provisions of law other than this section.'';

(B) by striking subsection (c) and inserting the following:

''(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State

1 constitution, law, or regulation that prohibits an alter-
2 native mortgage transaction. For purposes of this sub-
3 section, a State constitution, law, or regulation that pro-
4 hibits an alternative mortgage transaction does not in-
5 clude any State constitution, law, or regulation that regu-
6 lates mortgage transactions generally, including any re-
7 striction on prepayment penalties or late charges.''; and
8 (C) by adding at the end the following:
9 ''(d) CFPA ACTIONS.—The Consumer Financial
10 Protection Agency shall—
11 ''(1) review the regulations identified by the
12 Comptroller of the Currency, the National Credit
13 Union Administration, and the Director of the Office
14 of Thrift Supervision (as those rules exist on the
15 designated transfer date), as applicable under para-
16 graphs (1) through (3) of subsection (a);
17 ''(2) determine whether such regulations are
18 fair and not deceptive and otherwise meet the objec-
19 tives of section 1021 of the Consumer Financial
20 Protection Agency Act of 2009; and
21 ''(3) promulgate regulations under subsection
22 (a)(4) after the designated transfer date.
23 ''(e) DESIGNATED TRANSFER DATE.—As used in
24 this section, the term 'designated transfer date' means the

date determined under section 1062 of the Consumer Financial Protection Agency Act of 2009.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of l982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE COMMUNITY REINVESTMENT ACT OF 1977.

(a) IN GENERAL.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended—

(1) by striking ''each appropriate Federal financial supervisory agency'' and inserting ''the Consumer Financial Protection Agency'';

(2) by striking ''appropriate Federal financial supervisory agency'' each place that term appears and inserting ''CFPA'';

(3) in section 803 (12 U.S.C. 2902)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting a semicolon;

(C) in paragraph (4)—

(i) by striking ''A'' and inserting ''a''; and

(ii) by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(5) the term 'CFPA' means the Consumer Financial Protection Agency.'';

(4) in section 804 (12 U.S.C. 2903)—

(A) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—In connection with its examination of a financial institution—

''(1) the CFPA shall assess the record of the institution of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

''(2) the FIRA shall take such assessment into account in its evaluation of an application for a deposit facility by such institution.''; and

(B) in subsection (c)(2)(B), by striking ''such agency'' and inserting ''the CFPA'';

(5) in section 805 (12 U.S.C. 2904), by striking ''Each'' and inserting ''The'';

(6) in section 806 (12 U.S.C. 2905), by striking ''Regulations'' and all that follows through the end and inserting the following: ''The CFPA shall prescribe rules to carry out this title.''; and

(7) in section 807 (12 U.S.C. 2906)—

(A) in subsection (b)—

(i) by striking ''appropriate Federal financial supervisory agency's conclusions'' and inserting ''conclusions of the CFPA''; and

(ii) by striking ''Federal financial supervisory agencies'' and inserting ''CFPA'';

(B) in subsection (c)(1), by inserting before the period ''or to the CFPA''; and

(C) in subsection (d), by striking ''Federal financial supervisory agency'' and inserting ''CFPA''.

SEC. 1085. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''CFPA'';

(2) in section 903 (15 U.S.C. 1693a), by striking paragraph (3) and inserting the following:

"(3) the term 'CFPA' means the Consumer Financial Protection Agency;";

(3) in section 916(d) (as so designated by section 401 of the Credit CARD Act of 2009) (15 U.S.C. 1693m)—

(A) by striking "FEDERAL RESERVE SYSTEM" and inserting "CONSUMER FINANCIAL PROTECTION AGENCY"; and

(B) by striking "Federal Reserve System" and inserting "Consumer Financial Protection Agency"; and

(4) in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o)—

(A) in subsection (a)—

(i) by striking "Compliance" and inserting "Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance";

(ii) in paragraph (1)(A), by striking "Office of the Comptroller of the Currency" and inserting "Financial Institutions Regulatory Administration"; and

(iii) by striking paragraph (2) and inserting the following:

"(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA;"; and

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.".

SEC. 1086. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''CFPA'';

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

''(c) The term 'CFPA' means the Consumer Financial Protection Agency.'';

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

''SEC. 703. PROMULGATION OF REGULATIONS BY THE CFPA.'';

(B) by striking ''(a) REGULATIONS.—'';

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively; and

(E) in subsection (c), as so redesignated, by striking ''paragraph (2)'' and inserting ''subsection (b)'';

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency'' and inserting ''Financial Institutions Regulatory Administration'';

(iii) by striking paragraph (2) and inserting the following:

''(2) Subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA.''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation

of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the CFPA under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking ''BOARD'' each place that term appears and inserting ''CFPA''; and

(ii) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''CONSUMER FINANCIAL PROTECTION AGENCY''; and

(B) by striking ''Federal Reserve System'' and inserting ''Consumer Financial Protection Agency''.

SEC. 1087. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after ''Board'' the following '', jointly with the Director of the Consumer Financial Protection Agency,''.

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in subsection (f), the following: '', jointly with the Director of the Consumer Financial Protection Agency,''; and

(2) in subsection (f), by striking ''Board.'' each place that term appears and inserting the following: ''Board, jointly with the Director of the Consumer Financial Protection Agency.''.

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after ''Board'' each place that term appears the following: '', jointly with the Director of the Consumer Financial Protection Agency,''; and

(2) in subsection (f), in the subsection heading, by inserting ''AND CFPA''after ''BOARD''.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after ''Board'' the following '', jointly with the Director of the Consumer Financial Protection Agency,''; and

(2) by striking subsection (e) and inserting the following:

''(e) CONSULTATIONS.—In prescribing regulations under subsection (a) and (b) of this section, the Board and the Director of the Consumer Financial Protection Agency, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Chairperson of FIRA, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.''.

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking ''Board'' each place that term appears and inserting ''CFPA''.

SEC. 1089. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

''(w) The term 'CFPA' means the Consumer Financial Protection Agency.''; and

(2) except as otherwise specifically provided in this subsection—

(A) by striking ''Federal Trade Commission'' each place that term appears and inserting ''CFPA'';

(B) by striking ''FTC'' each place that term appears and inserting ''CFPA'';

(C) by striking ''the Commission'' each place that term appears and inserting ''the CFPA''; and

(D) by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each

place that term appears and inserting ''The CFPA shall'';

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''CFPA'';

(4) in section 604(g) (15 U.S.C.1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

''(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the CFPA (consistent with the enforcement authorities prescribed under section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).'';

(B) by striking paragraph (5) and inserting the following:

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

''(A) REGULATIONS REQUIRED.—The CFPA may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to

1 protect legitimate operational, transactional,
2 risk, consumer, and other needs (and which
3 shall include permitting actions necessary for
4 administrative verification purposes), consistent
5 with the intent of paragraph (2) to restrict the
6 use of medical information for inappropriate
7 purposes.''; and
8 (C) by striking paragraph (6);
9 (5) in section 611(e)(2) (15 U.S.C.1681i(e)), by
10 striking paragraph (2) and inserting the following:
11 ''(2) EXCLUSION.—Complaints received or ob-
12 tained by the CFPA pursuant to its investigative au-
13 thority under the Consumer Financial Protection
14 Agency Act of 2009 shall not be subject to para-
15 graph (1).'';
16 (6) in section 615(h)(6) (15 U.S.C.
17 1681m(h)(6)), by striking subparagraph (A) and in-
18 serting the following:
19 ''(A) RULES REQUIRED.—The CFPA shall
20 prescribe rules to carry out this subsection.'';
21 (7) in section 621 (15 U.S.C.1681s)—
22 (A) by striking subsection (a) and insert-
23 ing the following:
24 ''(a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
25 SION.—

"(1) IN GENERAL.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission, with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Com-

mission Act. The CFPA shall have such procedural, investigative, and enforcement powers (subject to section 1022 of the Consumer Financial Protection Agency Act of 2009), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title.

"(2) PENALTIES.—

"(A) KNOWING VIOLATIONS.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

"(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take

into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

"(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.";

(8) by striking subsection (b) and inserting the following:

"(b) ENFORCEMENT BY OTHER AGENCIES.—

"(1) IN GENERAL.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to

1 such agencies, and users of information that are
2 subject to section 615(d) shall be enforced under—
3 "(A) section 8 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1818), in the case of—
5 "(i) any national bank, and any Fed-
6 eral branch or Federal agency of a foreign
7 bank, by the Financial Institutions Regu-
8 latory Administration (hereafter in this
9 title referred to as 'FIRA');
10 "(ii) any member bank of the Federal
11 Reserve System (other than a national
12 bank), a branch or agency of a foreign
13 bank (other than a Federal branch, Fed-
14 eral agency, or insured State branch of a
15 foreign bank), a commercial lending com-
16 pany owned or controlled by a foreign
17 bank, and any organization operating
18 under section 25 or 25A of the Federal
19 Reserve Act, by the Board of Governors of
20 the Federal Reserve System; and
21 "(iii) any bank insured by the Federal
22 Deposit Insurance Corporation (other than
23 a member of the Federal Reserve System)
24 and any insured State branch of a foreign

bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

"(B) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA;

"(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

"(D) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

"(E) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(F) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act, by the Secretary of Agriculture, with respect to any activities subject to that Act;

"(G) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission; and

"(H) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that subject to the jurisdiction of the Securities and Exchange Commission.

"(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).";

(9) by striking subsection (e) and inserting the following:

"(e) REGULATORY AUTHORITY.—The CFPA shall prescribe such regulations as are necessary to carry out the purposes of this Act. The regulations prescribed by the CFPA under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section."; and

(10) in section 623 (15 U.S.C.1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

"(D) MODEL DISCLOSURE.—

"(i) DUTY OF CFPA.—The CFPA shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

"(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the CFPA.

"(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the CFPA under this subparagraph, or the financial institution uses any such model form and rearranges its format."; and

(B) by striking subsection (e) and inserting the following:

"(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

"(1) GUIDELINES.—The CFPA shall, with respect to persons or entities that are subject to the

enforcement authority of the CFPA under section 621—

"(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

"(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

"(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the CFPA shall—

"(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

"(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

"(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

"(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.".

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 note) is amended by striking "The Federal banking agencies, the National Credit Union Administration, and the Commission, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act and" and inserting "The Consumer Financial Protection Agency, with respect to a person that is subject to its enforcement authority, the Commodity Futures Trading Commission, and".

SEC. 1090. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking ''Commission'' each place that term appears and inserting ''CFPA'';

(2) in section 803 (15 U.S.C. 1692a)—

(A) by striking paragraph (1) and inserting the following:

''(1) The term 'CFPA' means the Consumer Financial Protection Agency.'';

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

''(a) FEDERAL TRADE COMMISSION.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with this title shall be enforced by the Federal Trade Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under subsection (b). For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the

Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(B) in subsection (b)—

(i) by striking ''Compliance'' and inserting ''Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(ii) in paragraph (1)(A), by striking ''Office of the Comptroller of the Currency;'' and inserting ''Financial Institutions Regulatory Administration''; and

(iii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA;''; and

(4) in subsection (d), by striking ''Neither the Commission'' and all that follows through the end of the subsection and inserting the following: ''The CFPA may prescribe rules with respect to the collec-

tion of debts by debt collectors, as defined in this Act.''.

SEC. 1091. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

''(6) REFERRAL TO CONSUMER FINANCIAL PROTECTION AGENCY.—Each appropriate Federal banking agency shall make a referral to the Consumer Financial Protection Agency when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined the Consumer Financial Protection Agency Act of 2009, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.''; and

(2) in section 43 (2 U.S.C. 1831t)—

(A) in subsection (c), by striking ''Federal Trade Commission'' and inserting ''CFPA'';

(B) in subsection (d), by striking ''Federal Trade Commission'' and inserting ''CFPA'';

(C) in subsection (e)—

(i) in paragraph (2), by striking ''Federal Trade Commission'' and inserting ''CFPA''; and

(ii) by adding at the end the following new paragraph:

''(5) CFPA.—The term 'CFPA' means the Consumer Financial Protection Agency.''; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

''(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Agency Act of 2009, by the CFPA, with respect to any person (and without regard to the provision of a consumer financial product or service).''; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the CFPA has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of

such action, bring an action under this section against any defendant named in the complaint of the CFPA for any violation of this section that is alleged in that complaint.''.

SEC. 1092. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 504(a)(1) (15 U.S.C. 6804(a)(1))—

(A) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Consumer Financial Protection Agency and''; and

(B) by striking '', and the Federal Trade Commission'';

(2) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking ''This subtitle and the regulations prescribed thereunder shall be enforced by'' and inserting ''Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, this subtitle and the regulations prescribed thereunder shall be enforced by the Consumer Financial Protection Agency,'';

(B) in paragraph (1)—

(i) in subparagraph (B), by inserting "and" after the semicolon;

(ii) in subparagraph (C), by striking "; and" and inserting a period; and

(iii) by striking subparagraph (D); and

(C) by adding at the end the following:

"(8) Under the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the CFPA under that Act, but not with respect to the standards under section 501."; and

(3) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting ", other than the Consumer Financial Protection Agency," after "subsection (a)".

SEC. 1093. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) except as otherwise specifically provided in this section, by striking ''Board'' each place that term appears and inserting ''CFPA'';

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

''(1) the term 'CFPA' means the Consumer Financial Protection Agency;'';

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting ''age,'' before ''and gender'';

(ii) in paragraph (3), by striking ''and'' at the end; and

(iii) in paragraph (4), by striking the period at the end and inserting the following: ''; and

''(5) the number and dollar amount of mortgage loans grouped according to measurements of—

''(A) the total points and fees payable at origination in connection with the mortgage as

1 determined by the CFPA, taking into account
2 15 U.S.C. 1602(aa)(4);
3 ''(B) the difference between the annual
4 percentage rate associated with the loan and a
5 benchmark rate or rates for all loans;
6 ''(C) the term in months of any prepay-
7 ment penalty or other fee or charge payable on
8 repayment of some portion of principal or the
9 entire principal in advance of scheduled pay-
10 ments; and
11 ''(D) such other information as the CFPA
12 may require; and
13 ''(6) the number and dollar amount of mort-
14 gage loans and completed applications grouped ac-
15 cording to measurements of—
16 ''(A) the value of the real property pledged
17 or proposed to be pledged as collateral;
18 ''(B) the actual or proposed term in
19 months of any introductory period after which
20 the rate of interest may change;
21 ''(C) the presence of contractual terms or
22 proposed contractual terms that would allow the
23 mortgagor or applicant to make payments other
24 than fully amortizing payments during any por-
25 tion of the loan term;

"(D) the actual or proposed term in months of the mortgage loan;

"(E) the channel through which application was made, including retail, broker, and other relevant categories;

"(F) as the CFPA may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in Section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

"(G) as the CFPA may determine to be appropriate, a universal loan identifier;

"(H) as the CFPA may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

"(I) the credit score of mortgage applicants and mortgagors, in such form as the CFPA may prescribe, except that the CFPA shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

"(J) such other information as the CFPA may require.";

(B) in subsection (i), by striking ''subsection (b)(4)'' and inserting ''subsections (b)(4), (b)(5), and (b)(6)'';

(C) in subsection (j)—

(i) in paragraph (1), by striking ''(as'' and inserting ''(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise'';

(ii) by striking paragraph (3) and inserting the following:

''(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the CFPA may require''; and

(iii) in paragraph (2)(A), by striking ''in the format in which such information is maintained by the institution'' and inserting ''in such formats as the CFPA may require'';

(D) in subsection (m), by striking paragraph (2) and inserting the following:

''(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall

provide the person requesting the information with a copy of the information requested in such formats as the CFPA may require'';

(E) by striking subsection (h) and inserting the following:

''(h) SUBMISSION TO AGENCIES.—

''(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the CFPA or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the CFPA. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the CFPA, in cooperation with other appropriate regulators described in paragraph (2), shall develop regulations that—

''(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public;

''(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

"(C) require disclosure of the class of the purchaser of such loans; and

"(D) permit any reporting institution to submit in writing to the CFPA or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

"(2) OTHER APPROPRIATE AGENCIES.—The appropriate regulators described in this paragraph are—

"(A) the Financial Institutions Regulatory Administration (hereafter in this Act referred to as 'FIRA') for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

"(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

"(C) the National Credit Union Administration Board for credit unions; and

"(D) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in subparagraphs (A) through (C)."; and

(F) by adding at the end the following:

"(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the CFPA or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the CFPA. Institutions shall not be required to report new data required under section 188(c) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the CFPA in final form.";

(4) in section 305 (12 U.S.C. 2804)—

(A) by striking subsection (b) and inserting the following:

"(b) POWERS OF CERTAIN OTHER AGENCIES.—

"(1) IN GENERAL.—Compliance with the requirements of this title shall be enforced under—

"(A) section 8 of the Federal Deposit Insurance Act, in the case of—

"(i) any national bank, and any Federal branch or Federal agency of a foreign bank, by FIRA;

"(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C), by the Federal Deposit Insurance Corporation;

"(B) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA;

"(C) the Federal Credit Union Act, by the Administrator of the National Credit Union Ad-

1 ministration with respect to any insured credit
2 union; and
3 ''(D) other lending institutions, by the Sec-
4 retary of Housing and Urban Development.
5 ''(2) INCORPORATED DEFINITIONS.—The terms
6 used in paragraph (1) that are not defined in this
7 title or otherwise defined in section 3(s) of the Fed-
8 eral Deposit Insurance Act (12 U.S.C. 1813(s))
9 shall have the same meanings as in section 1(b) of
10 the International Banking Act of 1978 (12 U.S.C.
11 3101).''; and
12 (B) by adding at the end the following:
13 ''(d) OVERALL ENFORCEMENT AUTHORITY OF THE
14 CONSUMER FINANCIAL PROTECTION AGENCY.—Subject
15 to section 1022 of the Consumer Financial Protection
16 Agency Act of 2009, enforcement of the requirements im-
17 posed under this title is committed to each of the agencies
18 under subsection (b). The CFPA may exercise its authori-
19 ties under the Consumer Financial Protection Agency Act
20 of 2009 to exercise principal authority to examine and en-
21 force compliance by any person with the requirements of
22 this title.'';
23 (5) in section 306 (12 U.S.C. 2805(b)), by
24 striking subsection (b) and inserting the following:

"(b) EXEMPTION AUTHORITY.—The CFPA may, by regulation, exempt from the requirements of this title any State chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by FIRA under section 8 of the Federal Deposit Insurance Act, in the case of national banks and savings association the deposits of which are insured by the Federal Deposit Insurance Corporation."; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

"SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

"(a) IN GENERAL.—

"(1) CONSULTATION REQUIRED.—The Director of the Consumer Financial Protection Agency, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons, as the CFPA deems appropriate, shall develop or assist in

the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

''(3) CONTRACTING AUTHORITY.—The Director of the Consumer Financial Protection Agency is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Consumer Financial Protection Agency shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Consumer Financial Protection Agency deems appropriate to carry out the purpose of this title.''.

SEC. 1094. AMENDMENTS TO THE HOME OWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(4) subtitle E of title X of the Consumer Financial Protection Agency Act of 2009, by the Consumer Financial Protection Agency.''; and

(2) in subsection (b)(2), by inserting before the period at the end the following: '', subject to section 1022 of the Consumer Financial Protection Agency Act of 2009''.

SEC. 1095. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking ''Consumer Advisory Council of the Board'' and inserting ''Advisory Board to the CFPA''; and

(2) by striking ''Board'' each place that term appears and inserting ''CFPA''.

SEC. 1096. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8) is amended—

(1) in subsection (a), by striking paragraph (1) and inserting the following:

"(1) The Consumer Financial Protection Agency shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Agency Act of 2009."; and

(2) by striking paragraphs (2) through (4) and inserting the following:

"(2) The Consumer Financial Protection Agency shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer

Financial Protection Agency Act of 2009 were incorporated into and made part of this subsection.''; and

(3) in subsection (b)—

(A) by striking ''Federal Trade Commission'' and inserting ''Consumer Financial Protection Agency'';

(B) by striking ''the Commission'' and inserting ''the Consumer Financial Protection Agency''; and

(C) by striking ''primary Federal regulator'' and inserting ''Consumer Financial Protection Agency''.

SEC. 1097. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking ''and'' at the end;

(B) in paragraph (8), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(9) the term 'CFPA' means the Consumer Financial Protection Agency.'';

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: ''The CFPA shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(B) by striking ''Secretary'' each place that term appears and inserting ''CFPA''; and

(C) by striking ''form'' each place that term appears and inserting ''forms'';

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking ''Secretary'' each place that term appears, and inserting ''CFPA''; and

(B) in subsection (a), by striking the first sentence and inserting the following: ''The CFPA shall prepare and distribute booklets jointly complying with the requirements of the Truth in Lending Act and the provisions of this title, in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.'';

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking ''Secretary'' and inserting ''CFPA''; and

(B) by striking '', by regulations that shall take effect not later than April 20, 1991,'';

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking ''Secretary'' and inserting ''CFPA'';

(6) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting ''CFPA AND'' before ''SECRETARY'';

(B) in paragraph (4)—

(i) by striking ''The Secretary,'' and inserting ''The CFPA, the Secretary,''; and

(ii) by inserting before the period the following: '', except that, to the extent that a Federal law authorizes the CFPA and

other Federal and State agencies to enforce or administer the law, the CFPA shall have primary authority to enforce or administer this section in accordance with section 1022 of the Consumer Financial Protection Agency Act of 2009.'';

(7) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking ''Secretary'' and inserting ''CFPA'';

(8) in section 16 (12 U.S.C. 2614), by inserting ''the CFPA,'' before ''the Secretary'';

(9) in section 18 (12 U.S.C. 2616), by striking ''Secretary'' each place that term appears and inserting ''CFPA''; and

(10) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking ''**SECRETARY**'' and inserting ''**CFPA**''; and

(B) by striking ''Secretary'' each place that term appears and inserting ''CFPA''.

SEC. 1098. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101 (12 U.S.C. 3401)—

(A) by striking paragraph (1) and inserting the following:

"(1) 'financial institution' means any national bank, card issuer (as defined in section 103(n) of the Truth in Lending Act), credit union, or consumer finance institution located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;";

(B) in paragraph (6)—

(i) in subparagraph (A), by inserting "and" after the semicolon;

(ii) in subparagraph (B), by striking "and" at the end; and

(iii) by striking subparagraph (C); and

(C) in paragraph (7)—

(i) by striking subparagraph (B) and inserting the following:

"(B) the Financial Institutions Regulatory Administration (hereafter in this title referred to as 'FIRA');"; and

(ii) by striking subparagraph (E) and inserting the following:

"(E) the Consumer Financial Protection Agency;";

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Consumer Financial Protection Agency is permitted''; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

''(r) DISCLOSURE TO THE CONSUMER FINANCIAL PROTECTION AGENCY.—Nothing in this title shall apply to the examination by or disclosure to the Consumer Financial Protection Agency of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 1099. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking ''a Federal banking agency'' each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting ''the CFPA'';

(2) by striking ''Federal banking agencies'' each place that term appears and inserting ''CFPA''; and

(3) by striking ''Secretary'' each place that term appears and inserting ''Director'';

(4) in section 1503 (12 U.S.C. 5102)—

(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

(B) by striking paragraph (1) and inserting the following:

''(1) CFPA.—The term 'CFPA' means the Consumer Financial Protection Agency.

''(2) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Financial Institutions Regulatory Agency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.''; and

(C) by striking paragraph (10), as so redesignated by this section, and inserting the following:

''(10) DIRECTOR.—The term 'Director' means the Director of the Consumer Financial Protection Agency.''; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The CFPA shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Agency Act of 2009."; and

(ii) in paragraph (2)—

(I) by striking "appropriate Federal banking agency and the Farm Credit Administration" and inserting "CFPA"; and

(II) by striking "employees's identity" and inserting "identity of the employee"; and

(B) in subsection (b), by striking "through the Financial Institutions Examination Council, and the Farm Credit Administration", and inserting "and the Consumer Financial Protection Agency";

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following:

"SEC. 1508. CONSUMER FINANCIAL PROTECTION AGENCY BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM."; and

(B) by adding at the end the following:

"(f) REGULATION AUTHORITY.—

"(1) IN GENERAL.—The CFPA is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

"(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the CFPA shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.";

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

"SEC. 1510. FEES.

"The CFPA, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.";

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

"SEC. 1513. LIABILITY PROVISIONS.

"The CFPA, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators."; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking "**UNDER HUD BACKUP**

1 **LICENSING SYSTEM**'' and inserting ''**BY THE**
2 **CFPA**''.

3 **SEC. 1100. AMENDMENTS TO THE TRUTH IN LENDING ACT.**

4 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
5 is amended—

6 (1) in section 103 (5 U.S.C. 1602)—

7 (A) by redesignating subsections (b)
8 through (bb) as subsections (c) through (cc),
9 respectively; and

10 (B) by inserting after subsection (a) the
11 following:

12 ''(b) CFPA.—The term 'CFPA' means the Consumer
13 Financial Protection Agency.'';

14 (2) by striking ''Board'' each place that term
15 appears, other than in section 140(d) and section
16 108(a), as amended by this section, and inserting
17 ''CFPA'';

18 (3) by striking ''Federal Trade Commission''
19 each place that term appears, other than in section
20 108(c) and section 129(m), as amended by this Act,
21 and other than in the context of a reference to the
22 Federal Trade Commission Act, and inserting
23 ''CFPA'';

24 (4) in section 105(b) (15 U.S.C. 1604(b)), by
25 striking the first sentence and inserting the fol-

lowing: ''The CFPA shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(5) in section 108 (15 U.S.C. 1607)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCING AGENCIES.—Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance with the requirements imposed under this title shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) any national bank, and Federal branch or Federal agency of a foreign bank, by the Financial Institutions Regulatory Administration (hereafter in this title referred to as 'FIRA');

"(B) any member bank of the Federal Reserve System (other than a national bank), any branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), any commercial lending company owned or controlled by a foreign bank, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and an insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

"(2) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA;

"(3) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

"(4) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

"(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act; and

"(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association."; and

(B) by striking subsection (c) and inserting the following:

"(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation

of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.''; (6) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

''(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the CFPA pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''; and

(7) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking ''the Board'' each place that term appears and inserting ''the CFPA''; and

(B) by striking ''The Board'' each place that term appears and inserting ''The CFPA''.

SEC. 1101. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (15 U.S.C. 4301 et seq.) is amended—

(1) by striking ''Board'' each place that term appears, other than in sections 264, 268, 270(a), and 270(f), and inserting ''CFPA'';

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking ''Compliance'' and inserting ''Subject to section 1022 of the Consumer Financial Protection Agency Act of 2009, compliance'';

(B) in paragraph (1)—

(i) by striking subparagraph (A) and inserting the following:

''(A) by the Chairperson of the Financial Institutions Regulatory Administration (hereafter in this title referred to as 'FIRA') for national banks, and Federal branches and Federal agencies of foreign banks; and'';

(ii) in subparagraph (B), by striking ''and'' at the end; and

(iii) by striking subparagraph (C);

(C) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end, the following:

"(3) subtitle E of the Consumer Financial Protection Agency Act of 2009, by the CFPA.";

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking "regulation prescribed by the Board" each place that term appears and inserting "regulation prescribed by the CFPA"; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

"(4) CFPA.—The term 'CFPA' means the Consumer Financial Protection Agency.".

SEC. 1102. TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

"(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Agency Act of 2009, including any enumerated consumer law thereunder, the Commission shall consult with the Consumer Financial Protection Agency regarding

1 the consistency of a proposed rule with standards, pur-
2 poses, or objectives administered by the Consumer Finan-
3 cial Protection Agency.

4 ''(c) VIOLATIONS.—Any violation of any rule pre-
5 scribed under subsection (a)—

6 ''(1) shall be treated as a violation of a rule
7 under section 18 of the Federal Trade Commission
8 Act regarding unfair or deceptive acts or practices;
9 and

10 ''(2) that is committed by a person subject to
11 the Consumer Financial Protection Agency Act of
12 2009 shall be treated as a violation of a rule under
13 section 1031 of that Act regarding unfair, deceptive,
14 or abusive acts or practices.''.

15 (b) AMENDMENTS TO SECTION 4.—Section 4(d) of
16 the Telemarketing and Consumer Fraud and Abuse Pre-
17 vention Act (15 U.S.C. 6103(d)) is amended by inserting
18 after ''Commission'' each place that term appears the fol-
19 lowing: ''or the Consumer Financial Protection Agency''.

20 (c) AMENDMENTS TO SECTION 5.—Section 5(c) of
21 the Telemarketing and Consumer Fraud and Abuse Pre-
22 vention Act (15 U.S.C. 6104(c)) is by inserting after
23 ''Commission'' each place that term appears the following:
24 ''or the Consumer Financial Protection Agency''.

(d) (D) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

''(d) ENFORCEMENT BY CFPA.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, this Act shall be enforced by the Consumer Financial Protection Agency under subtitle E of title X of the Consumer Financial Protection Agency Act of 2009.''.

SEC. 1103. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) NO PRIOR REVIEW OF RULES, ORDERS, LEGISLATIVE RECOMMENDATIONS, TESTIMONY, OR COMMENTS.—No officer or agency of the United States shall have any authority to require the CFPA to submit proposed or final rules, proposed or final orders, legislative recommendations, testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review prior to the publication or submission of such proposed or final rules, proposed or final orders, legislative recommendations, testimony, or comments on legislation, except that any such recommendations, testimony, or comments to the Congress shall include a statement that the views expressed therein are those of the

CFPA and do not necessarily represent the views of the President.

(b) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting ''the Consumer Financial Protection Agency,'' after ''the Securities and Exchange Commission,''.

SEC. 1104. EFFECTIVE DATE.

The amendments made by this subtitle shall become effective on the designated transfer date.

TITLE XI—FINANCIAL REGULATORY AGENCIES TRANSITION OVERSIGHT COMMISSION

SEC. 1151. FINANCIAL REGULATORY AGENCIES TRANSITION OVERSIGHT COMMISSION.

(a) DEFINITIONS.—In this section—

(1) the term ''new agencies'' means the Agency, FIRA, and the CFPA, as established by titles I, III, and X, respectively; and

(2) the term ''Oversight Commission'' means the Financial Regulatory Agencies Transition Oversight Commission.

(b) IN GENERAL.—There is established the Financial Regulatory Agencies Transition Oversight Commission, the purpose of which is to ensure that the new agencies—

(1) have an orderly and organized start up;

(2) attract and retain qualified workforces; and

(3) establish comprehensive employee training and benefits programs.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) IN GENERAL.—The Oversight Commission shall be composed of 5 members appointed by the President, by and with the advice and consent of the Senate.

(B) CHAIRPERSON.—The Oversight Commission shall select a Chairperson from among its members.

(2) QUALIFICATIONS.—Members of the Oversight Commission shall be appointed on the basis of their professional experience in—

(A) public sector workforce management, including labor relations;

(B) financial institution supervision or regulations;

(C) consumer protection in connection with financial products or services;

(D) information technology;

(E) training and workforce development; or

(F) the compensation, benefits, and working conditions for Federal employees.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Oversight Commission.

(4) VACANCY.—Any vacancy on the Oversight Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) RESPONSIBILITIES OF THE OVERSIGHT COMMISSION.—

(1) GENERAL RESPONSIBILITIES.—

(A) OVERSIGHT.—The Oversight Commission shall oversee—

(i) the transition of responsibilities and employees to the new agencies in accordance with this Act; and

(ii) subsequent administration, management, conduct, direction, and implementation of the organizational missions of the new agencies.

(B) COOPERATION.—The Oversight Commission shall work with the new agencies to develop a strategic plan to comply with the requirements of this section.

(2) SPECIFIC RESPONSIBILITIES.—

(A) TRAINING AND WORKFORCE DEVELOPMENT.—The Oversight Commission shall review and approve training and workforce development plans of the new agencies that include, to the extent practicable—

(i) identification of skill and technical expertise needs and action taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by agency employees.

(B) WORKPLACE FLEXIBILITIES REVIEW.—The Oversight Commission shall review and approve workforce flexibility plans of the new agencies that include, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities as determined appropriate by the Oversight Commission; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION.—

(i) REVIEW REQUIRED.—The Oversight Commission shall review and approve the recruitment and retention plans of the new agencies, including the process and criteria used to identify which employees of existing Federal agencies will be transferred to the new agency.

(ii) PLAN CONTENT.—Each recruitment and retention plan of a new agency shall include, to the extent practicable, provisions relating to—

(I) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(II) streamlined employment application processes;

(III) the provision of timely notification of the status of employment applications to applicants; and

(IV) the collection of information to measure indicators of hiring effectiveness.

(e) OVERSIGHT COMMISSION PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—Each member of the Oversight Commission shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Oversight Commission.

(2) STAFF.—

(A) IN GENERAL.—The Chairperson of the Oversight Commission may appoint and terminate an executive director and such other per-

sonnel as may be necessary to enable the Oversight Commission to perform the duties of the Oversight Commission.

(B) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Oversight Commission, the head of any Federal agency or department may detail, on a reimbursable basis, any of the personnel of that agency or department to assist the Oversight Commission in carrying out the duties of the Oversight Commission.

(C) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Oversight Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5136 of such title.

(f) ADMINISTRATIVE MATTERS.—

(1) CHAIRPERSON.—

(A) POWERS.—Except as otherwise provided by a majority vote of the Oversight Commission, the powers of the Chairperson shall include—

(i) establishing Committees, as necessary;

(ii) setting meeting places and times;

(iii) establishing meeting agendas; and

(iv) developing procedures for the conduct of business.

(B) MEETINGS.—The Oversight Commission shall meet not less frequently than quarterly, and otherwise at the call of the Chairperson.

(2) REPORT.—The Oversight Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives that includes an analysis of the activities required of the new agencies under this title.

(g) TERMINATION OF THE OVERSIGHT COMMISSION.—The Oversight Commission shall terminate 3 years after the date of enactment of this Act.

TITLE XII—FEDERAL RESERVE SYSTEM PROVISIONS

SEC. 1201. FEDERAL RESERVE ACT AMENDMENTS ON EMERGENCY LENDING AUTHORITY.

The third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343) (relating to emergency lending authority) is amended—

(1) by inserting ''(3)(A)'' before ''In unusual'';

(2) by striking ''individual, partnership, or corporation'' each place that term appears and inserting the following: ''financial utilities or payment, clearing, or settlement activities that the Agency for Financial Stability determines are, or are likely to become, systemically important, or any program or facility with broad-based participation'';

(3) by striking ''exchange for an individual or a partnership or corporation'' and inserting ''exchange,''; and

(4) by striking ''may prescribe.'' and inserting the following: ''may prescribe.

''(B) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

"(i) not later than 7 days after providing any loan or other financial assistance under this paragraph, a report that includes—

"(I) the justification for the exercise of authority to provide such assistance;

"(II) the identity of the recipients of such assistance, subject to subparagraph (C);

"(III) the date and amount of the assistance, and form in which the assistance was provided; and

"(IV) the terms of the assistance, including—

"(aa) duration;

"(bb) collateral pledged and the value thereof;

"(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

"(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

"(ee) the expected costs to the taxpayers of such assistance; and

"(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

"(I) the value of collateral;

"(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

"(III) the expected or final cost to the taxpayers of such assistance.

"(C) The Board may postpone releasing the identity of a recipient, and may withhold any detail about pledged collateral that would identify the recipient, for a period of not longer than 1 year, beginning on the date on which such assistance is first received.".

SEC. 1202. SELECTION OF BOARDS OF DIRECTORS OF FEDERAL RESERVE BANKS.

Section 4 of the Federal Reserve Act (12 U.S.C. 301 et seq.) is amended—

(1) in the 9th undesignated paragraph (12 U.S.C. 302) (relating to Class A directors), by strik-

ing ''chosen by'' and inserting ''appointed by the Board of Governors of the Federal Reserve System'';

(2) in the 10th undesignated paragraph (12 U.S.C. 302) (relating to Class B directors), by striking ''elected'' and inserting ''appointed by the Board of Governors of the Federal Reserve System'';

(3) by striking the 11th undesignated paragraph (relating to Class C directors) and inserting the following:

''Class C shall consist of 3 members. One member shall be the chairman of the board, who shall be appointed by the President, by and with the advice and consent of the Senate. Upon the expiration of the term of office of the chairman, the chairman shall continue to serve until the successor of the chairman is appointed and qualified. The 2 Class C members who are not the chairman shall be designated by the Board of Governors of the Federal Reserve System. Each class C member shall be chosen to represent the public, without discrimination on the basis of race, creed, color, sex, or national origin, and with due (but not exclusive) consideration to the interests of agriculture, commerce, industry, services, labor, and consumers. When the necessary subscriptions to the capital stock have been obtained

for the organization of any Federal reserve bank, the President shall appoint the class C member who shall serve as chairman, and the Board of Governors of the Federal Reserve System shall appoint the 2 class C members who are not the chairman. Pending the appointment and qualification of the chairman, the organization committee shall exercise the powers and duties appertaining to the office of chairman in the organization of the Federal reserve bank.''; (4) by striking the 16th undesignated paragraph (12 U.S.C. 304) (relating to the nomination and election of directors of Class A and Class B); (5) by striking the 17th undesignated paragraph (12 U.S.C. 304) (relating to the requirement for a preferential ballot); (6) by striking the 18th undesignated paragraph (12 U.S.C. 304) (relating to eligibility of candidates serving more than 1 member bank); (7) by striking the 19th undesignated paragraph (12 U.S.C. 304) (relating to counting the ballots) and inserting the following:

''The Board of Governors of the Federal Reserve System shall establish a public process for soliciting comments relating to the selection of Class B and Class C directors of the Federal reserve

banks, to ensure that the interests of agriculture, commerce, industry, services, labor, and consumers are adequately represented.''; and

(8) by striking the 22nd undesignated paragraph (12 U.S.C. 305) (relating to Class C directors, selection, and Federal reserve agent) and inserting the following:

''The Class C directors shall have been, for not less than 2 years, residents of the district for which they are appointed. The chairman of the board of directors shall be designated as 'Federal reserve agent'. The individual appointed as chairman shall be a person with relevant expertise in economic policy, business, banking, or financial markets, and in addition to the duties of the individual as chairman of the board of directors of the Federal reserve bank, such individual shall be required to maintain, under regulations established by the Board of Governors of the Federal Reserve System, a local office of said board on the premises of the Federal reserve bank. The chairman shall make regular reports to the Board of Governors of the Federal Reserve System, and shall act as its official representative for the performance of the functions conferred upon the Board of Governors of the Federal Reserve System

by this Act. The chairman shall receive an annual compensation to be fixed by the Board of Governors of the Federal Reserve System and paid monthly by the Federal reserve bank to which the chairman is appointed. One of the class C directors shall be appointed by the Board of Governors of the Federal Reserve System as deputy chairman, to exercise the powers of the chairman of the board in the case of the absence or unavailability of the chairman. In case of the absence or unavailability of the chairman and deputy chairman, the class C director who is not the chairman or the deputy chairman shall preside at meetings of the board of directors.''.

SEC. 1203. REVIEWS OF SPECIAL FEDERAL RESERVE CREDIT FACILITIES.

(a) REVIEWS.—Section 714 of title 31, United States Code, is amended by adding at the end the following:

''(f) REVIEWS OF CREDIT FACILITIES OF THE FEDERAL RESERVE SYSTEM.—

''(1) DEFINITION.—In this subsection, the term 'credit facility' means an entity established by or on behalf of the Board or a Federal reserve bank, including—

''(A) the Money Market Investor Funding Facility;

"(B) the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility;

"(C) the Term Asset-Backed Securities Loan Facility;

"(D) the Primary Dealer Credit Facility;

"(E) the Commercial Paper Funding Facility; and

"(F) any other utility, activity, program, facility, or special purpose vehicle that is approved by or receives assistance from the Board under the 3rd undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343), other than a credit facility that is subject to the requirements of subsection (e).

"(2) IN GENERAL.—Subject to paragraph (3), and notwithstanding any limitation in subsection (b) on the auditing and oversight of certain functions of the Board or any Federal reserve bank, the Comptroller General may conduct reviews, including onsite examinations, if the Comptroller General determines that such examinations are appropriate, of the accounting, financial reporting, and internal controls of any credit facility, including when such facilities are established or operated by or on behalf of the Board or any official of a Federal reserve bank.

"(3) REPORTS AND DELAYED DISCLOSURE.—

"(A) REPORTS REQUIRED.—A report on each review conducted under paragraph (2) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such review is completed.

"(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusions of the Comptroller General with respect to the review that is the subject of the report, together with such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

"(C) DELAYED RELEASE OF CERTAIN INFORMATION.—

"(i) IN GENERAL.—The Comptroller General shall not disclose to any person or entity, including to the Congress, the names or identifying details of specific participants in any of the audited facilities or identifying details regarding assets or collateral held by, under, or in connection with any of the audited facilities, and any

report provided under subparagraph (A) shall be redacted to ensure that such details are not disclosed.

"(ii) DELAYED RELEASE.—The nondisclosure obligation under clause (i) shall expire with respect to any participant after a period of not longer than 1 year, beginning on the earlier of the date on which—

"(I) assistance is first received; or

"(II) the Board discloses the identity of the subject participant.

"(iii) GENERAL RELEASE.—The Comptroller General shall release a nonredacted version of any reports on specific credit facilities, 1 year after the termination of the relevant credit facility.".

(b) ACCESS TO RECORDS.—Section 714(d) of title 31, United States Code, is amended—

(1) in paragraph (2), by inserting "or any single and specific partnership or corporation (as specified in subsection (e)) or any facility established by an agency (as specified in subsection (f))" after "used by an agency";

(2) in paragraph (3), by inserting ''or (f)'' after ''subsection (e)'' each place that term appears; and

(3) in paragraph (3)(B), by adding at the end the following: ''The Comptroller General may make and retain copies of books, accounts, and other records provided under subparagraph (A) as the Comptroller General deems appropriate. The Comptroller General shall have access to the officers, employees, contractors, and other agents and representatives of any single and specific partnership or corporation (as specified in subsection (e)) or any credit facility established by an agency (as specified in subsection (f)) at any reasonable time, as the Comptroller General may request. The Comptroller General shall provide to any such partnership, corporation, or credit facility a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out a review or examination under this subsection.''.

SEC. 1204. PUBLIC ACCESS TO INFORMATION.

Section 2B of the Federal Reserve Act (12 U.S.C. 225b) is amended by adding at the end the following:

''(c) PUBLIC ACCESS TO INFORMATION.—The Board shall place on its home Internet website, a link entitled

'Audit', which shall link to a webpage that shall serve as a repository of information made available to the public for a reasonable period of time, not less than 6 months following the date of release of the relevant information, including—

"(1) the reports prepared by the Comptroller General under section 714 of title 31, United States Code;

"(2) the annual financial statements prepared by an independent auditor for the Board in accordance with section 11B;

"(3) the reports to the Committee on Banking, Housing, and Urban Affairs of the Senate required under the third undesignated paragraph of section 13 (relating to emergency lending authority); and

"(4) such other information as the Board reasonably believes is necessary or helpful to the public in understanding the accounting, financial reporting, and internal controls of the Board and the Federal reserve banks.".