Section-by-Section Summary

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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Title I – Financial Stability

Section 101. Short Title

The title may be cited as the "Financial Stability Act of 2010."

Section 102. Definitions

This section defines various terms used in the title, including "bank holding company," "member agency," "nonbank financial company," "Office of Financial Research," and "significant institutions."

This section requires the Board of Governors to establish by rulemaking the criteria for determining whether a company is substantially engaged in financial activities to qualify as a nonbank financial company. It is intended that commercial companies, such as manufacturers, retailers, and others, would not be considered to be nonbank financial companies generally, and this provision is intended to provide certainty by mandating the establishment of the criteria through the public notice and comment process required for rulemaking.

This section also clarifies that with respect to foreign nonbank financial companies, references to "company" and "subsidiary" include only the United States activities and subsidiaries of such foreign companies.

Subtitle A – Financial Stability Oversight Council

Section 111. Financial Stability Oversight Council Established

This section establishes the Financial Stability Oversight Council ("Council"), consisting of the following voting members: (1) the Secretary of the Treasury, who will serve as the Chairperson ("Chairperson") of the Council, (2) the Chairman of the Board of Governors ("Board of Governors") of the Federal Reserve System, (3) the Comptroller of the Currency, (4) the Director of the Bureau of Consumer Financial Protection, (5) Director of the Federal Housing Finance Agency, (6) the Chairman of the Securities and Exchange Commission, (7) the Chairperson of the Federal Deposit Insurance Corporation ("FDIC"), (8) the Chairperson of the Commodity Futures Trading Commission, and (9) an independent member (appointed by the President, with the advice and consent of the Senate) having insurance expertise.

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The Director of the Office of Financial Research (which is established under subtitle B) will serve in an advisory capacity as a nonvoting member. The Council will meet at the call of the Chairperson or majority of the members then serving, but not less frequently than quarterly. Any employee of the Federal government may be detailed to the Council, and any department or agency of the United States may provide the Council such support services the Council may determine advisable.

Section 112. Council Authority

This section enumerates the purposes of the Council, which include: (1) identifying risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies; (2) promoting 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 (3) responding to emerging threats to the stability of the United States financial markets.

The duties of the Council include: (1) collecting information from member agencies and other regulatory agencies, and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies; (2) providing direction to, and requesting data and analyses from, the Office of Financial Research to support the work of the Council; (3) monitoring the financial services marketplace to identify threats to U.S. financial system stability; (4) facilitating information sharing among the member agencies; (5) recommending to member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies; (6) identifying gaps in regulation that could pose risks to U.S. financial system stability; (7) requiring supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the U.S. in the event of their material financial distress or failure; (8) making recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors; (9) identifying systemically important financial market utilities and payments, clearing, and settlement system activities and subjecting them to prudential standards by the Board of Governors; (10) making recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets; (11) providing a forum for discussion and analysis of emerging market developments and financial regulatory issues, and resolution of jurisdictional disputes among member agencies; and (10) reporting to and testifying before Congress.

The section also authorizes the Council, acting through the Office of Financial Research, to obtain information from the member agencies and financial companies to carry out the provisions of this title.

Section 113. Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies

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This section authorizes the Council, by a vote of not fewer than 2/3 of members then serving, including an affirmative vote by the Chairperson, to determine that a nonbank financial company will be supervised by the Board of Governors and subject to heightened prudential standards, if the Council determines that material financial distress at such company would pose a threat to the financial stability of the United States. Each determination will be based on a consideration of enumerated factors by the Council, including, among others, the degree of leverage, amount and nature of financial assets, amount and types of liabilities (including degree of reliance on short-term funding), extent and type of off-balance-sheet exposures, extent to which assets are managed rather than owned and to which ownership of assets under management is diffuse, and any other factors that the Council deems appropriate. The Council will provide written notice to each nonbank financial company of its proposed determination and the company would have the opportunity for a hearing before the Council to contest the proposed determination. The Council will consult with the primary federal regulatory agency of each nonbank financial company or subsidiary of the company before making any final determination. The section provides for judicial review of the final determination of the Council.

Section 114. Registration of Nonbank Financial Companies Supervised by the Board of Governors

This section directs a nonbank financial company to register with the Board of Governors if a final determination is made by the Council that such company is to be supervised by the Board of Governors.

Section 115. Enhanced Supervision and Prudential Standards for Nonbank Financial Companies Supervised by the Board of Governors and Certain Bank Holding Companies

This section authorizes the Council to make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements for nonbank financial companies supervised by the Board of Governors pursuant to a determination under section 113 and large, interconnected bank holding companies, that are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States, and increase in stringency with certain characteristics of the company, including its size and complexity. Any standards recommended by the Council will not apply to any bank holding company with total consolidated assets of less than $50 billion, and the Council may recommend an asset threshold greater than $50 billion for the applicability of any particular standard. The prudential standards may include risk-based capital requirements, leverage limits, liquidity requirements, a contingent capital requirement, resolution plan and credit exposure report requirements, concentration limits, and overall risk management requirements. The section enumerates the factors that the Council shall consider in making its recommendation. With respect to the contingent capital requirement, the Council shall conduct a study of the feasibility, benefits, costs, and structure of such a requirement and report to Congress not later than two years after the date of enactment of this Act.

Section 116. Reports

Under this section, the Council, acting through the Office of Financial Research, may require reports from nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets of $50 billion or more and their subsidiaries, but will use existing reports to the fullest extent possible.

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Section 117. Treatment of Certain Companies That Cease to be Bank Holding Companies

This section applies to any entity or a successor entity that (1) was a bank holding company having total consolidated assets equal to or greater than $50 billion as of January 1, 2010, and (2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program. If such entity ceases to be a bank holding company at any time after January 1, 2010, then the entity will be treated as a nonbank financial company supervised by the Board of Governors as if the Council had made a determination under section 113. The entity may request a hearing and appeal to the Council its treatment as a nonbank financial company supervised by the Board of Governors.

Section 118. Council Funding

Any expenses of the Council will be treated as expenses of, and paid by, the Office of Financial Research.

Section 119. Resolution of Supervisory Jurisdictional Disputes Among Member Agencies

This section authorizes a dispute resolution function for the Council. The Council shall resolve disputes among member agencies about the respective jurisdiction over a particular financial company, activity, or product if the agencies cannot resolve the dispute without the Council's intervention. The section prescribes the procedures for dispute resolution and makes the Council's written decision binding on parties to the dispute.

Section 120. Additional Standards Applicable to Activities or Practices for Financial Stability Purposes

This section authorizes the Council to issue recommendations to the primary financial regulatory agencies to apply new or heightened prudential standards and safeguards, including those enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the agencies' jurisdiction. The Council would make such recommendation if it determines that the conduct of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or U.S. financial markets. The section requires the Council to consult with the primary financial regulatory agencies, provide notice and opportunity for comment on any proposed recommendations, and consider the effect of any recommendation on costs to long-term economic growth. The Council may recommend specific actions to apply to the conduct of a financial activity or practice, including limits on scope or additional capital and risk management requirements.

The Council may inform the primary financial regulatory agency of any Council determination that a bank holding company or nonbank financial company, activity, or practice no longer requires any heightened standards implemented under this title. The primary financial regulatory agency may determine whether to keep such standards in effect.

Section 121. Mitigation of Risks to Financial Stability

This section authorizes the Board of Governors, if it determines that a nonbank financial company supervised by the Board of Governors pursuant to a determination under section 113 or a bank holding company with total consolidated assets of $50 billion or more poses a grave threat to the

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financial stability of the United States, to require such company to comply with conditions on the conduct of certain activities, terminate certain activities, or, if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States, sell or transfer assets to unaffiliated entities, with an affirmative vote of 2/3 of the Council members then serving and after notice and opportunity for hearing. The Board of Governors and the Council will take into consideration the factors set forth in section 113(a) and (b) in any determination or decision under this section.

Subtitle B – Office of Financial Research

Section 151. Definitions

Section 152. Office of Financial Research Established

This section establishes within the Treasury Department the Office of Financial Research, headed by a Director appointed by the President and confirmed by the Senate. The Director shall serve for a term of 6 years. This section provides the Director with certain authorities to manage the Office and also authorizes a fellowship program to be established.

Section 153. Purpose and Duties of the Office

The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council and to support member agencies of the Council by (1) collecting data on behalf of the Council and providing such data to the Council and member agencies; (2) standardizing the types and formats of data reported and collected; (3) performing applied research and essential long-term research; (4) developing tools for risk measurement and monitoring; (5) performing other related services; and (6) making the results of the activities of the Office available to financial regulatory agencies. This section provides the Office with certain administrative authorities and rulemaking authority regarding data collection and standardization, requires the Director to testify annually before Congress, and authorizes the Director to provide additional reports to Congress.

Section 154. Organizational Structure; Responsibilities of Primary Programmatic Units

This section establishes within the Office, to carry out the programmatic responsibilities of the Office, the Data Center and the Research and Analysis Center. The Data Center shall, on behalf of the Council, collect, validate, and maintain all data necessary to carry out the duties of the Data Center. The data assembled shall be obtained from member agencies of the Council, commercial data providers, publicly available data sources, and financial entities. The Data Center shall prepare and publish a financial company reference database, financial instrument reference database, and formats and standards for Office data, but shall not publish any confidential data. The Research and Analysis Center shall, on behalf of the Council, develop and maintain independent analytical capabilities and computing resources to (1) develop and maintain metrics and reporting systems for risks to the financial stability of the United States, (2) monitor investigate, and report on changes in system-wide risk levels and patterns to the Council and Congress, (3) conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets, (4) evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies, (5) maintain expertise in such

areas as may be necessary to support specific requests for advice and assistance from financial regulators, (6) investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings, (7) conduct studies and provide advice on the impact of policies related to systemic risk, and (8) promote best practices for financial risk management. Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall submit a report to Congress that assesses the state of the United States financial system, including an analysis of any threats to the financial stability of the United States, the status of the efforts of the Office in meeting the mission of the Office, and key findings from the research and analysis of the financial system by the Office.

Section 155. Funding

This section creates a mechanism to fund the Office through assessments on nonbank financial companies supervised by the Board of Governors pursuant to a determination under section 113 and bank holding companies with total consolidated assets of $50 billion or more. The Board of Governors shall provide interim funding during the 2-year period following the date of enactment of this Act, and subsequent to the 2-year period the Secretary of Treasury shall establish by regulation, with the approval of the Council, an assessment schedule applicable to such companies that takes into account differences among such companies based on considerations for establishing the prudential standards for such companies under section 115.

Section 156. Transition Oversight

The purpose of this section is to ensure that the Office has an orderly and organized startup, attracts and retains a qualified workforce, and establishes comprehensive employee training and benefits programs. The Office shall submit an annual report to the Senate Banking Committee and the House Financial Services Committee that includes a training and workforce development plan, workplace flexibilities plan, and recruitment and retention plan. The reporting requirement shall terminate 5 years after the date of enactment of the Act. Nothing in this section shall be construed to affect a collective bargaining agreement or the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C – Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

Section 161. Reports by and Examination of Nonbank Financial Companies by the Board of Governors

The Board of Governors may require reports from nonbank financial companies supervised by the Board of Governors and any subsidiaries of such companies, and may examine them to determine the nature of the operations and financial condition of the company and its subsidiaries; the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of the company or the stability of the U.S. financial system; the systems for monitoring and controlling such risks; and compliance with the requirements of this subtitle.

To the fullest extent possible, the Board of Governors shall rely on reports of examination of functionally regulated subsidiaries made by their primary regulators.

Section 162. Enforcement

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Nonbank financial companies supervised by the Board of Governors will be subject to the enforcement provisions under section 8 of the Federal Deposit Insurance Act.

If the Board of Governors determines that a functionally regulated subsidiary not comply with the regulations of the Board of Governors or otherwise poses a threat to the financial stability of the U.S., the Board of Governors may recommend in writing to the primary financial regulatory agency for the subsidiary that the agency initiate a supervisory action or an enforcement proceeding. If the agency does not initiate an action within 30 days, the Board of Governors shall report this failure to the Council.

Section 163. Acquisitions

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of section 3 of the Bank Holding Company Act which governs acquisitions. A nonbank financial company supervised by the Board of Governors or a bank holding company with total consolidated assets of $50 billion or more shall not acquire direct or indirect ownership or control of any voting shares of a company engaged in nonbanking activities having total consolidated assets of $10 billion or more without providing advanced written notice to the Board of Governors.

In addition to other criteria under the Bank Holding Company Act for reviewing acquisitions, the Board of Governors shall consider the extent to which a proposed acquisition would result in greater or more concentrated risks to global or U.S. financial stability of the global or U.S. economy.

Section 164. Prohibition Against Management Interlocks Between Certain Financial Holding Companies

A nonbank financial company supervised by the Board of Governors pursuant to a determination under section 113 shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act.

Section 165. Enhanced Supervision and Prudential Standards for Nonbank Financial Companies Supervised by the Board of Governors and Certain Bank Holding Companies

This section directs the Board of Governors to establish prudential standards and reporting and disclosure requirements for nonbank financial companies supervised by the Board of Governors pursuant to a determination under section 113 and large, interconnected bank holding companies that are more stringent than those applicable to other nonbank financial companies and bank holding companies and increase in stringency with certain characteristics of the company, including its size and complexity. The prudential standards will include risk-based capital requirements, leverage limits, liquidity requirements, a contingent capital requirement, resolution plan and credit exposure report requirements, concentration limits, and overall risk management requirements. The section enumerates the factors that the Board of Governors shall consider in setting the standards. It requires that each nonbank financial company supervised by the Board of Governors as well as bank holding company with total consolidated assets of $10 billion or more that is a publicly traded company to establish a risk committee to be responsible for oversight of enterprise-wide risk management practices of the company.

With respect to the resolution plan requirement authorized in this section, if the Board of Governors and the FDIC jointly determine that the resolution plan of a company is not credible and would facilitate an orderly resolution under the bankruptcy code, such company would have to resubmit

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resolution plans to correct deficiencies. Failure to resubmit a plan correcting deficiencies within a certain timeframe would result in the Board of Governors and the FDIC imposing more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company. If, two years after the imposition of these requirements or restrictions, the company still has not resubmitted a plan that corrects the deficiencies, the Board of Governors and the FDIC, in consultation with the Council, may direct the company to divest certain assets or operations in order to facilitate an orderly resolution under the Bankruptcy code in the event of failure.

Section 166. Early Remediation Requirements

The Board of Governors, in consultation with the Council and the FDIC, shall by regulation establish requirements to provide for early remediation of financial distress of a nonbank financial company supervised by the Board of Governors pursuant to a determination under section 113 or a large, interconnected bank holding company. This provision does not authorize the provision of any financial assistance from the Federal government. Instead, the purpose of this provision is to establish a series of specific remedial actions to be taken by such company if it is experiencing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

Section 167. Affiliation

Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors pursuant to a determination under section 113 or a company that controls such nonbank financial company to conform it activities to the requirements of section 4 of the Bank Holding Company Act. If such company engages in activities that are not financial in nature, the Board of Governors may require such company to establish and conduct its financial activities in an intermediate holding company.

Section 168. Regulations

Except as otherwise specified in this subtitle, the Board of Governors shall issue final regulations to implement this subtitle no later than 18 months after the transfer date.

Section 169. Avoiding Duplication

The Board of Governors shall take any action it deems appropriate to avoid imposing requirements that are duplicative of applicable requirements under other provisions of law.

Section 170. Safe Harbor

The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of nonbank financial companies from supervision by the Board of Governors pursuant to a determination under section 113 The Board of Governors, in consultation with the Council, shall review such regulations no less frequently than every 5 years, and based upon the review, the Board of Governors may update such regulations, and such updates will not take effect until 2 years after publication in final form. The Chairpersons of the Board of Governors and the Council shall submit a joint report to the Senate Banking Committee and the House Financial Services Committee not later than 30 days after issuing the regulations or updates, and such report shall include at a minimum the rationale for exemption and empirical evidence to support the criteria for exemption.

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Title II – Orderly Resolution Authority

Section 201. Definitions

This section defines various terms used in this title, including the following: a "covered financial company" is a financial company (as defined in this section) for which a determination has been made to use the orderly liquidation authority under section 203; and a "covered broker or dealer" is a covered financial company that is a broker dealer registered with the Securities and Exchange Commission ("SEC") under section 15(b) of the Securities Exchange Act of 1934 and is a member of Securities Investor Protection Corporation ("SIPC").

Section 202. Orderly Liquidation Authority Panel

This section establishes an Orderly Liquidation Authority Panel ("Panel") composed of 3 judges from the United States Bankruptcy Court for the District of Delaware. Subsequent to a determination by the Secretary of the Treasury ("Secretary") under section 203, the Secretary, upon notice to the Federal Deposit Insurance Corporation ("FDIC") and the covered financial company, shall petition the Panel for an order authorizing the Secretary to appoint the FDIC as receiver. The Panel, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine within 24 hours of receipt of the petition whether the determination of the Secretary is supported by substantial evidence. If the Panel determines that the determination of the Secretary (1) is supported by substantial evidence, the Panel shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company, and (2) is not supported by substantial evidence, the Panel shall immediately provide the Secretary with a written statement of its reasons and afford the Secretary with an opportunity to amend and refile the petition with the Panel. The decision of the Panel may be appealed to the United States Court of Appeals not later than 30 days after the date on which the decision of the Panel is rendered, and the decision of the Court of Appeals may be appealed to the Supreme Court not later than 30 days after the date of the final decision of the Court of Appeals.

This section also requires the following studies: a study each by the Administrative Office of the United States Courts and the Comptroller General of the United States regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code, and a study by the Comptroller General of the United States regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

Section 203. Systemic Risk Determination

This section establishes the process for triggering the use of the orderly liquidation authority. The Board of Governors of the Federal Reserve System ("Board of Governors") and the Board of Directors of the FDIC must each, by a two-thirds vote of its members then serving, provide a written recommendation to the Secretary that includes: (1) an evaluation of whether a financial company is in default or in danger of default; (2) a description of the effects that the failure of the financial company would have on financial stability in the United States; and (3) a recommendation regarding the nature and extent of actions that should be taken under this title. (The Secretary may request the Board of Governors and the FDIC to consider making the recommendation, or the Board of Governors and the FDIC may make the recommendation on their own initiative.)

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In the case of a covered broker or dealer, or in which the largest U.S. subsidiary of a covered financial company is a covered broker or dealer, the SEC and the Board of Governors must each, by a two-thirds vote of its members then serving, provide a written recommendation to the Secretary as described above. (The Secretary of the Treasury may request the Board of Governors and the SEC to consider making the recommendation, or the Board of Governors and the SEC may make the recommendation on their own initiative.)

Upon receiving such recommendations, the Secretary (in consultation with the President) may make a written determination that: (1) the financial company is in default or in danger of default; (2) the failure of the financial company and its resolution under otherwise applicable law would have serious adverse effects on U.S. financial stability; (3) no viable private sector alternative is available to prevent default; (4) any effect on the claims or interests of creditors, counterparties, and shareholders as a result of actions taken under this title has been taken into account; (5) any action under section 204 would avoid or mitigate such adverse effects; and (6) a Federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments that are subject to the order of the regulator. The Secretary would take into consideration the effectiveness of the action in mitigating adverse effects on the financial system, any cost to the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the covered financial company.

The Secretary shall provide written notice of the determination to Congress within 48 hours. The FDIC shall submit a report to Congress within 60 days of its appointment as receiver on the covered financial company and update the information contained in the report at least quarterly. The Government Accountability Office will review and report on the Secretary‘s determination.

The FDIC shall establish policies and procedures acceptable to the Secretary governing the use of funds available to the FDIC to carry out this title.

If an insurance company that is a covered financial company or subsidiary or affiliate of a covered financial company, its liquidation or rehabilitation shall be conducted as provided under state law. The FDIC shall have backup authority to file appropriate judicial action in state court to place such a company into liquidation under state law if the state regulator fails to act within 60 days.

Section 204. Orderly Liquidation

This section provides that the FDIC act as receiver of the covered financial company upon appointment of the Corporation under section 202. The FDIC, as receiver, must consult with primary financial regulatory agencies of: (1) the covered financial company and its covered subsidiaries to ensure an orderly liquidation; and (2) any subsidiaries that are not covered subsidiaries to coordinate the appropriate treatment of any such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate. The FDIC shall consult with the SEC and the SIPC in the case of a covered financial company that is a broker dealer and member of SIPC. The FDIC may consult with or acquire the services of outside experts to assist in the orderly liquidation process.

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The FDIC may make funds available to the receivership for the orderly liquidation of the covered financial company subject to the mandatory terms and conditions set forth in section 206 and the orderly liquidation plan described in section 210(n)(13).

Section 205. Orderly Liquidation of Covered Brokers and Dealers

This subsection provides that the FDIC shall appoint SIPC, without any need for court approval, to act as trustee for liquidation under the Securities Investor Protection Act of 1970 of a covered broker or dealer. The subsection prescribes the powers, duties, and limitation of powers of SIPC as trustee. Except as otherwise provide in this title, no court may take any action, including an action pursuant to the Securities Investor Protection Act of 1970 or the Bankruptcy Code, to restrain or affect the powers or functions of the FDIC as receiver of the covered broker or dealer.

Section 206. Mandatory Terms and Conditions for All Orderly Liquidation Actions.

The FDIC shall take action under this title only if it determines that such actions are necessary for financial stability and not for the purpose of preserving the covered financial company. The FDIC must also ensure that shareholders would not receive any payment until after all other claims are fully paid, that unsecured creditors bear losses in accordance with the claims priority provisions in section 210, and that management responsible for the company's failure is removed (if it has not already been removed at the time of the FDIC's appointment as receiver).

Section 207. Directors not Liable for Acquiescing in Appointment of Receiver

This section exempts the board of directors of a covered financial company from liability to the company's shareholders or creditors for acquiescing or consenting in good faith to appointment of a receiver under section 203.

Section 208. Dismissal and Exclusion of Other Actions

This section provides that the appointment of the FDIC as receiver under section 202 for a covered financial company or the appointment of SIPC as trustee for a covered broker or dealer under section 205 shall result in the dismissal and prevent any other bankruptcy or insolvency proceeding.

Section 209. Rulemaking; Non-Conflicting Law

This section requires the FDIC, in consultation with the Council, to prescribe such rules or regulations as considered necessary or appropriate to implement this title. To the extent possible, the FDIC shall seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.

Section 210. Powers and Duties of the Corporation

Subsection (a). Powers and Authorities.

This subsection defines the powers and authorities of the FDIC as receiver of a covered financial company, including its powers and duties: (1) to succeed to the rights, title, powers, and privileges of the covered financial company and its stockholders, members, officers, and directors; (2) to operate the company with all the powers of shareholders, members, directors, and officers; (3) to liquidate the company through sale of assets or transfer of assets to a bridge financial company established under

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subsection (h); (4) to merge the company with another company or transferring assets or liabilities; (5) to pay valid obligations that come due, to the extent that funds are available; (6) to exercise subpoena powers; (7) to utilize private sector services to manage and dispose of assets; (8) to terminate rights and claims of stockholders and creditors (except for the right to payment of claims consistent with the priority of claims provision under this section); and (9) to determine and pay claims. The subsection also prescribes the FDIC's authorities to avoid fraudulent or preferential transfers of interests of the covered financial company.

Subsection (b). Priority of Expenses and Unsecured Claims.

This section defines the priority of expenses and unsecured claims against the covered financial company or the FDIC as receiver for such company. All claimants of a covered financial company that are similarly situated in the expenses and claims priority shall be treated in a similar manner except in cases where the FDIC determines that doing otherwise would maximize the asset value of the company or maximize the present value of the proceeds (or minimize the amount of any loss) from disposing of the assets of the company. All claimants that are similarly situated in the expense and claims priority shall not receive less than the maximum liability amount defined in subsection (d).

Subsection (c). Provisions Relating to Contracts Entered Into Before Appointment of Receiver.

This subsection authorizes the FDIC to repudiate and enforce contracts and handle the financial company's qualified financial contracts (including derivatives). A counterparty to a qualified financial contract would be stayed from terminating, liquidating, or netting the contract (solely by reason of the appointment of a receiver) until 5:00 PM on the fifth business day after the date that the FDIC was appointed receiver. (The length of the stay differs from that authorized under the Federal Deposit Insurance Act with respect to an insured depository institution. Under the Federal Deposit Insurance Act, the stay would last until 5:00 PM one business day following the date that the FDIC was appointed receiver.)

Subsection (d). Valuation of Claims in Default.

This subsection establishes the FDIC's maximum liability for claims against the covered financial company (or FDIC as receiver) as the amount that the claimant would have received if the FDIC had not been appointed receiver with respect to the covered financial company and the company was liquidated under chapter 7 of the U.S. Bankruptcy Code or any State insolvency law. The subsection also authorizes the FDIC, as receiver and with the Secretary's approval, to make additional payments to claimants only if the FDIC determines this to be necessary to minimize losses to the FDIC as receiver from the orderly liquidation of the covered financial company.

Subsection (e). Limitation on Court Action.

This subsection precludes a court from taking action to restrain or affect the powers or functions of the FDIC when it is exercising its powers as receiver, except as otherwise provided in the title.

Subsection (f). Liability of Directors and Officers.

This subsection provides that FDIC may take actions to hold directors and officers of a covered financial company personally liable for monetary damages with respect to gross negligence.

Subsection (g). Damages.

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This subsection provides that recoverable damages in claims brought against directors, officers, or employees of a covered financial company for improper investment or use of company assets include principal losses and appropriate interest.

Subsection (h). Bridge Financial Companies.

This subsection authorizes the FDIC, as receiver, to establish one or more bridge financial companies. Such bridge financial companies may assume liabilities and purchase assets of the covered financial company, and perform other temporary functions that the FDIC may prescribe.

Subsection (i). Sharing Records.

This subsection requires other Federal regulators to make available to the FDIC all records relating to the covered financial company.

Subsection (j). Expedited Procedures for Certain Claims.

This subsection expedites federal courts' consideration of cases brought by the FDIC against a covered financial company's directors, officers, employees, or agents.

Subsection (k). Foreign Investigations.

This subsection authorizes the FDIC, as receiver, to request assistance from, and provide assistance to, any foreign financial authority.

Subsection (l). Prohibition on Entering Secrecy Agreements and Protective Orders.

This subsection prohibits the FDIC from entering into any agreement that prohibits it from disclosing the terms of any settlement of any action brought by the FDIC as receiver of a covered financial company.

Subsection (m). Liquidation of Certain Covered Financial Companies or Bridge Financial Companies.

This subsection provides that the FDIC, as receiver, in liquidating any covered financial company or bridge financial company that is either (1) a stockbroker that is not a member of SIPC, or (2) a commodity broker, will apply the applicable liquidation provisions of the bankruptcy code pertaining to "stockbrokers" and "commodity brokers" (as such terms are defined in subchapters III and IV, respectively, of chapter 7 of chapter 7 of the U.S. Bankruptcy Code).

Subsection (n). Orderly Liquidation Fund.

This subsection creates the Orderly Liquidation Fund ("Fund') in the Treasury Department that will be available to the FDIC to carry out the authorities in this title, including the orderly liquidation of a covered financial company, payment of administrative expenses, and payment of principal and interest on obligations. The FDIC shall manage the Fund consistent with the policies and procedures established under section 203(d) and invest amounts held in the Fund that are not required to meet the FDIC's current needs in obligations of the United States.

The target size of the Fund shall be $50 billion, adjusted on a periodic basis for inflation. The FDIC shall impose assessments as provided in subsection (o) to capitalize the Fund and reach the target size during an "initial capitalization period" of not less than 5 years or greater than 10 years from the date of enactment. (The FDIC, with the approval of the Secretary of the Treasury, may extend the initial

capitalization period if the Fund incurs a loss from the failure of a covered financial company before the initial capitalization period expires.) Except as provided in subsection (o), FDIC shall suspend assessments when the initial capitalization period expires. The FDIC may issue obligations to the Secretary of the Treasury subject to a maximum obligation limitation that prohibits FDIC from issuing or incurring any obligation that would result in total obligations outstanding that exceed the sum of (1) the amount of cash and cash equivalents held in the Fund, and (2) the amount that is equal to 90 percent of the fair value of assets from each covered financial company that are available to repay the Corporation. The FDIC and the Secretary shall jointly prescribe rules, in consultation with the Council, governing the calculation of the maximum obligation limitation.

The FDIC may issue obligations only after the cash and cash equivalents of the Fund have been drawn down to facilitate the orderly liquidation of a covered financial company.

Amounts in the Fund shall be available to the FDIC with regard to a covered financial company for which the FDIC has been appointed receiver after the FDIC has developed an orderly liquidation plan acceptable to the Secretary of the Treasury. The FDIC may amend an approved plan at any time, with the concurrence of the Secretary.

Subsection (o). Risk-Based Assessments.

This subsection requires the FDIC to charge risk-based assessments to eligible financial companies during the initial capitalization period until the FDIC determines that the Fund has reached the target size. Eligible financial companies include bank holding companies with total consolidated assets equal to or greater than $50 billion and nonbank financial companies supervised by the Board of Governors pursuant to a determination under section 113 of Title I.

The FDIC must charge additional risk-based assessments if: (1) the Fund falls below the target size after the initial capitalization period in order to restore the Fund to the target size over a period determined by the FDIC; (2) the FDIC is appointed receiver for a covered financial company and the Fund incurs a loss during the initial capitalization period; or (3) such assessments are necessary to pay in full obligations issued to the Secretary of the Treasury within 60 months of their issuance (unless the FDIC requests, and the Secretary approves, an extension in order to avoid as serious adverse effect on the U.S. financial system). If required, any such additional risk-based assessments shall be imposed, taking into consideration the enumerated risk factors in this subsection, on (1) eligible financial companies and financial companies with total assets equal to or greater than $50 billion that are not eligible financial companies, and (2) any financial company, at a substantially higher rate than would otherwise be assessed, that benefitted from the orderly liquidation under this title by receiving payments or credit pursuant to subsections (b)(4) and (d)(4). The subsection outlines the risk factors that the FDIC shall consider in imposing risk-based assessments to capitalize the Fund as well as any additional assessments that may be required.

The FDIC shall prescribe regulations to carry out this subsection in consultation with the Secretary and the Council, and such regulations shall take into account the differences in risks posed by different financial companies, the differences in the liability structure of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect

Section-by-Section Summary

such differences. It is intended that the risk-based assessments may vary among different types or classes of financial companies in accordance with the risks posed to the financial stability of the United States.

Subsection (p). Unenforceability of Certain Agreements.

This subsection prohibits enforceability of any term contained in any existing or future standstill, confidentiality, or other agreement that affects or restricts the ability of a person to acquire, that prohibits a person from offering to acquire, or that prohibits a person from using previously disclosed information in connection with an offer to acquire, all or part of a covered financial company.

Subsection (q). Other Exemptions.

This subsection provides certain exemptions to the FDIC from taxes and levies when acting as a receiver for a covered financial company.

Subsection (r). Certain Sales of Assets Prohibited.

This subsection requires the FDIC to prescribe regulations prohibiting the sale of assets of a covered financial company to certain persons found to have been engaged in fraudulent activity or participated in transactions causing substantial losses to a covered financial company or who are convicted debtors.

Section 211. Miscellaneous Provisions.

This section makes a conforming change relating to concealment of assets from the FDIC acting as receiver for a covered financial company, and makes a conforming change to the netting provisions contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 by expanding the exceptions to include section 210(c) of this Act and section 1367 of HERA (12 U.S.C. § 4617(d)).

Section-by-Section Summary

Title III – Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors

Section 301. Short Title and purposes

The short title is "Enhancing Financial Institution Safety and Soundness Act of 2009." Among the purposes of the title are to provide for the safe and sound operation of the banking system; to preserve and protect the dual banking system of federal and state chartered depository institutions; and to streamline and rationalize the supervision of depository institutions and their holding companies.

Section 302. Definitions

Defines the term "transferred employee" to refer to those employees that are transferred from the Office of Thrift Supervision ("OTS") to the Office of the Comptroller of the Currency ("OCC") or the Federal Deposit Insurance Corporation ("FDIC").

Subtitle A – Transfer of Powers and Duties

Section 311. Transfer Date.

The "transfer date" is the date that is 1 year after the date of enactment or another date not later than 18 months if so designated by the Secretary of the Treasury. The transfer date is the date upon which various functions are transferred from the OTS to the Federal Reserve Board ("Board"), the OCC, and the OTS. Additionally, the FRB transfers certain functions to the OCC and FDIC. The transfer of personnel, property and funding are also keyed to the transfer date.

Section 312. Powers and Duties Transferred.

This section abolishes the OTS and transfers its functions to the Board, the OCC, and the FDIC. It also transfers from the Board to the OCC and the FDIC, holding company authority over smaller banks. And, it transfers from the Board to the FDIC, the supervision of state member banks.

As a result of these various transfers, the Board will have the larger, more complex bank and thrift holding companies – i.e., those with assets over $50 billion. The OCC will retain its authority over all national banks regardless of their size and will also supervise federal thrifts. The OCC will become a holding company regulator for the smaller bank and thrift holding companies (under $50 billion) where the majority of depository institution assets are in national banks and federal thrifts. The FDIC will regulate all insured state banks regardless of their size – including those that are members of the Federal Reserve System – and all state savings associations. The FDIC will also supervise the smaller holding companies (under $50 billion) where the majority of depository institution assets are in state banks or state thrifts.

The Board will retain its authority to issue rules under the Bank Holding Company Act and will also have the authority to issue rules under the Home Owners Loan Act with respect to savings and loan holding companies. When issuing rules under these acts that apply to bank and thrift holding companies with less than $50 billion in assets, the Board must consult with the OCC and the FDIC. The OCC will write the rules that apply to thrifts in consultation with the FDIC.

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This section amends the definition of "appropriate federal banking agency" in section 3(q) of the Federal Deposit Insurance Act which indicates the allocation of regulatory responsibility among the federal banking agencies by type of company – such as a national bank, a state member bank, a federal savings association. The definition is amended to reflect the new responsibilities of the Board, FDIC, and OCC. In addition to the description above, the Board will maintain its supervision of uninsured state member banks and various foreign bank-related entities.

This section also requires the OCC, Board and FDIC to issue a joint regulation specifying how the $50 billion will be calculated and at what frequency to determine the appropriate holding company regulator. In terms of the frequency of the assessment, it can be no less than 2 years, unless with respect to a particular institution there is a transaction outside the ordinary course of business, such as a merger or acquisition. In issuing the regulations, the agencies are directed to avoid disruptive transfers of regulatory authority.

Section 313. Abolishment

This section abolishes the Office of Thrift Supervision (OTS).

Section 314. Amendments to the Revised

This section clarifies the mission and authorities of the Office of the Comptroller of the Currency (OCC).

Section 315. Federal Information Policy

This section clarifies that the OCC is an independent agency for purposes of Federal information policy.

Section 316. Savings Provisions

This section preserves the existing rights, duties and obligations of the OTS, the Board of Governors of the Federal Reserve System (Board) and the Federal Reserve banks that existed on the day before the transfer date. This section also preserves existing law suits by or against the OTS, the Board, and the Federal Reserve banks, but states that as of the transfer date, law suits against the OTS in connection with functions transferred to the OCC, the FDIC, or Board, are transferred to these agencies as appropriate. In addition, as of the transfer date, law suits against the Board or a Federal Reserve bank in connection with functions transferred to the OCC or the FDIC are transferred to these agencies as appropriate.

This section also continues all of the existing orders, regulations, determinations, agreements, procedures, interpretations and advisory materials of the OTS and those of the Board that relate to the Board's functions that have been transferred.

Section 317. References in Federal Law to Federal Banking Agencies

This section provides that references in Federal law to the OTS with respect to functions that are transferred shall be deemed references to the OCC, FDIC, or Board, as appropriate. In addition, references in Federal law to the Board and the Federal Reserve banks with respect to their functions that are transferred shall be deemed references to the OCC or the FDIC, as appropriate.

Section-by-Section Summary

Section 318. Funding Section 318.

This section allows the Comptroller to collect an assessment, fee, or other charge from any entity the OCC supervises as necessary to carry out its responsibilities including with respect to holding companies, federal thrifts, and nonbank affiliates (that are not functionally regulated) that engage in bank permissible activities. The OCC's supervision of these nonbank affiliates is provided under a new section 6 of the Bank Holding Company Act of 1956. In establishing the amount of an assessment, fee, or other charge collected from an entity, the OCC may take into account the funds transferred to the OCC (under a new arrangement with the FDIC), the nature and scope of the activities of the entity, the amount and types of assets held by the entity, the financial and managerial condition of the entity, and any other factor that the OCC deems appropriate.

This section also requires the OCC to submit to the FDIC a proposal to promote parity in the examination fees paid by State and Federal depository institutions having total consolidated assets of less than $50,000,000,000. The proposal will recommend a transfer from the FDIC to the OCC of a percentage of the amount that the OCC estimates is necessary or appropriate to carry out its supervisory responsibilities of Federal depository institutions having total consolidated assets of less than $50,000,000,000. The FDIC is directed to assist the OCC in collecting data relative to the supervision of State depository institutions to develop the proposal.

Not later than 60 days after receipt of the proposal, the FDIC Board must vote on the proposal and promptly implement a plan to periodically transfer to the OCC a percentage of the amount that the OCC estimates is necessary or appropriate to carry out the its supervisory responsibilities for national banks and federal thrifts having total consolidated assets of less than $50,000,000,000, as approved by the FDIC Board. Not later than 30 days after the FDIC Board's vote, the FDIC must submit to the Senate Banking Committee and House Financial Services Committee a report describing the proposal made by the OCC and the decision resulting from the FDIC Board's vote. If, by 2 years after the date of enactment of this Act, the FDIC Board has failed to approve a plan, the Financial Stability Oversight Council shall approve a plan using the dispute resolution procedures under section 119.

The section also requires the Board of Governors to collect assessments, fees, and charges from (1) bank holding companies and savings and loan holding companies that have total consolidated assets equal to or greater than $50 billion, and (2) all nonbank financial companies supervised by the Board under section 113 of this Act, that are equal to the total expenses incurred by the Board of Governors to carry out its responsibilities with respect to such companies.

Section 319. Contracting and Leasing Authority

This section clarifies the contracting and leasing authorities of the Office of the Comptroller of the Currency.

Subtitle B – Transitional Provisions

Section 321. Interim Use of Funds, Personnel, and Property

Section-by-Section Summary

This section provides for the orderly transfer of functions (1) from the OTS to the OCC, FDIC and the Board; and (2) from the Board to the OCC and FDIC, with specific reference to funds, personnel and property.

Section 322. Transfer of Employees

This section states that all employees of the OTS are transferred to OCC or the FDIC. The OTS, OCC and FDIC must jointly identify the employees necessary to carry out the duties transferred from the OTS to the OCC and the FDIC. The Board, OCC and FDIC must jointly identify the employees necessary to carry out the duties transferred from the Board (including the Federal Reserve banks) to the OCC or the FDIC.

Under this section, relevant employees are transferred within 90 days of the transfer date. The section also describes the extent to which employees' status, tenure, pay, retirement and health care benefits are protected, and describes employee protections from involuntary separation and reassignments outside locality pay area. It also provides that not later than 2 years from the transfer date, the OCC and FDIC must each implement a uniform pay and classification system for transferred employees.

Section 323. Property Transferred

This section provides that property of the OTS is transferred to the OCC and FDIC. The OCC, FDIC and Board, will jointly determine which property of the Board should be transferred and to which of the agencies.

Section 324. Funds Transferred

This section provides that except to the extent necessary to dispose of the affairs of the OTS, all funds available to the OTS are transferred to the OCC, FDIC, or Board, in a manner commensurate with the functions that are transferred to these agencies.

Section 325. Disposition of Affairs

This section describes the authority of the Director of the OTS and the Chairman of the Board during the 90 day period beginning on the transfer date, to manage employees and property that have not yet been transferred, and to take actions necessary to wind up matters relating to any function transferred to another agency.

Section 326. Continuation of Services

This section states that any agency, department or instrumentality of the U.S. that was providing support services to the OTS or the Board, in connection with functions transferred to another agency, shall continue to provide such services until the transfer of functions is complete, and consult with the OCC, FDIC, or Board, as appropriate, to coordinate and facilitate a prompt and orderly transition.

Subtitle C – Federal Deposit Insurance Corporation

Section 331. Deposit Insurance Reform

This section amends the Federal Deposit Insurance Act to repeal the provision that states no institution may be denied the lowest-risk category solely because of its size. This section also directs the FDIC, unless it makes a written determination discussed below, to amend its regulations to define the term "assessment base" of an insured depository institution for purposes of deposit insurance

assessments as the average total assets of the insured depository institution during the assessment period, minus the sum of (1) the average tangible equity of the insured depository institution during the assessment period and (2) the average long-term unsecured debt of the insured depository institution during the assessment period.

If, not later than 1 year after the date of enactment of this Act, the FDIC submits to the Senate Banking Committee and House Financial Services Committee, in writing, a finding that such an amendment to its regulations regarding the definition of the term "assessment base" would reduce the effectiveness of the FDIC's risk-based assessment system or increase the risk of loss to the Deposit Insurance Fund, the FDIC may retain the definition of the term "assessment base", as in effect on the day before the date of enactment of this Act, or establish, by rule, a definition of the term "assessment base" that the FDIC deems appropriate.

Section 332. Management of the Federal Deposit Insurance Corporation

This section replaces the seat of the OTS on the FDIC Board of Directors with the Director of the Consumer Financial Protection Bureau.

Subtitle D – Termination of Federal Thrift Charter

Section 341. Termination of Federal Savings Associations

This section provides that upon the date of enactment of this Act, neither the Director of the OTS nor the OCC may issue a charter for a federal savings association.

Section 342. Branching

This section states that a savings association that becomes a bank may continue to operate its branches.

Section-by-Section Summary

Title IV – Regulation of Advisers to Hedge Funds and Others

Section 401. Short Title

Section 401 provides the title of the Act as the "Private Fund Investment Advisers Registration Act of 2010".

Section 402. Definitions

Section 402 defines the terms "private fund" and "foreign private adviser".

Section 403. Elimination of Private Adviser Exemption; Limited Exemption for Foreign Private Advisers; Limited Intrastate Exemption

Section 403 eliminates the exemption in section 203(b)(3) of the Investment Advisers Act of 1940 for advisers with fewer than 15 clients. The Section adds an exemption for foreign private advisers that have no place of business in the United States, have fewer than 15 U.S. clients, have less than $25 million assets under management for U.S. clients, and do not hold themselves out to U.S. clients as investment advisers. The Section adds a limited intrastate exemption, and an exemption for Small Business Investment Companies.

Section 404. Collection of Systemic Risk Data; Reports; Examinations; Disclosures

Section 404 provides that advisers to private funds must maintain and file specific systemic risk data which the SEC shall share with the systemic risk regulator. This information includes the level of assets and leverage of each fund, counterparty credit risk exposure, trading and investment positions, types of assets held, and other related information.

This section also directs the SEC to conduct periodic inspections of fund records and conduct other examinations if they deem necessary. Regulators use of records is subject to strict confidentiality requirements.

Section 405. Disclosure Provision Eliminated

Section 405 authorizes the SEC to obtain information from advisers about the identity, investments, or affairs of their clients, if necessary to assess potential systemic risk.

Section 406. Clarification of Rulemaking Authority

Section 406 clarifies the SEC's authority to define technical, trade, and other terms used in the title. The section also directs the SEC and CFTC to jointly promulgate rules regarding the form and content of reporting by firms that are registered with both agencies.

Section 407. Exemptions of Venture Capital Fund Advisers

Section 407 directs the SEC to define "venture capital fund" and provides that 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.

Section 408. Exemption of and Record Keeping by Private Equity Fund Advisers

Section 408 directs the SEC to define "private equity fund" and provides an exemption from registration for advisers to private equity funds. The section requires advisers to private equity funds to

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maintain such records and provide to the SEC such annual or other reports as the SEC determines necessary and appropriate in the public interest and for the protection of investors.

Section 409. Family Offices

Section 409 directs the SEC to define "family office" in a manner consistent with current no action positions and recognizing the range of organizational structures employed by family offices. The Section excludes single family offices from the definition of investment advisers in the Investment Advisers Act.

Section 410. State and Federal Responsibilities; Asset Threshold for Federal Registration of Investment Advisers

Section 410 increases the asset threshold above which investment advisers must register with the SEC from $25,000,000 to $100,000,000. States will have responsibility for regulating advisers with less than $100,000,000 in assets under management.

Section 411. Custody of Client Assets

Section 411 requires registered investment advisers to comply with SEC rules for the safeguarding of client assets and to use independent public accountants to verify assets.

Section 412. Adjusting the Accredited Investor Standard for Inflation

Section 412 requires the SEC to increase the dollar thresholds for accredited investor status, to take into account price inflation since the current figures were established. The Section also directs the SEC to adjust those figures at least every five years to reflect the percentage increase in the cost of living.

Section 413. GAO Study and Report on Accredited Investors

Section 413 directs the GAO to submit a report on the appropriate criteria for accredited investor status and eligibility to invest in private funds.

Section 414. GAO Study on Self-Regulatory Organization For Private Funds

Section 414 directs the GAO to study the feasibility of creating a self-regulatory organization to oversee hedge funds, private equity funds, and venture capital funds.

Section 415. Commission Study and Report on Short Selling

Section 415 directs the Office of Risk, Strategy, and Financial Innovation of the SEC to conduct a study on the current state of short selling, the impact of recent SEC rules, the recent incidence of failures to deliver, and the practice of delivering shares sold short on the fourth day following the trade.

Section 416. Transition Period

Section 416 provides that the title becomes effective one year after the date of enactment of this Act, but advisers to private funds may voluntarily register with the SEC during that 1-year period.

Section-by-Section Summary

Title V – Insurance

Subtitle A – Office of National Insurance

Section 501. Short Title

Section 502. Establishment of Office of National Insurance

This section establishes the Office of National Insurance ("Office") within the Department of the Treasury. The Office, to be headed by a career Senior Executive Service Director appointed by the Secretary of the Treasury ("Secretary"), will have the authority to: (1) monitor all aspects of the insurance industry; (2) recommend to the Financial Stability Oversight Council ("Council") that the Council designate an insurer, including its affiliates, as an entity subject to regulation by the Board of Governors as a nonbank financial company as defined in Title I of the Restoring American Financial Stability Act; (3) assist the Secretary in administering the Terrorism Risk Insurance Program; (4) coordinate Federal efforts and establish Federal policy on prudential aspects of international insurance matters; (5) determine whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures; and (6) consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance. The authority of the Office extends to all lines of insurance except health insurance.

In carrying out its functions, the Office may collect data and information on the insurance industry and insurers, as well as issue reports. It may require an insurer or an affiliate to submit data or information reasonably required to carry out functions of the Office, although the Office may establish an exception to data submission requirements for insurers meeting a minimum size threshold. Before collecting any data or information directly from an insurer, the Office must first coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, in the case of an affiliate) to determine whether the information is available from such State insurance regulator or other regulatory agency. The Office will have power to require by subpoena that an insurer produce the data or information requested, but only upon a written finding by the Director that the data or information is required to carry out its functions and that it has coordinated with relevant regulator or agency as required. Any non-publicly available data and information submitted to the Office will be subject to confidentiality provisions: privileges are not waived; any requirements regarding privacy or confidentiality will continue to apply; and information contained in examination reports will be considered subject to the exemption under the Freedom of Information Act for this type of information.

The Director will determine whether a State insurance measure is preempted because it: (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. However, nothing in this section preempts any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, State coverage requirements for insurance, application of State antitrust laws to the business of insurance, or

Section-by-Section Summary

any State insurance measure governing the capital or solvency of an insurer (except to the extent such measure results in less favorable treatment of a non-United States insurer than a United States insurer).

An "International Insurance Agreement on Prudential Measures" is defined as 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. Before making a determination of inconsistency, the Director will notify and consult with the appropriate State, publish a notice in the Federal Register, and give interested parties the opportunity to submit comments. Upon making the determination, the Director will notify the appropriate State and Congress, and establish a reasonable period of time before the preemption will become effective. At the conclusion of that period, if the basis for the determination still exists, the Director will publish a notice in the Federal Register that the preemption has become effective and notify the appropriate State.

The Director will consult with State insurance regulators, to the extent the Director determines appropriate, in carrying out the functions of the Office. Nothing in this section will be construed to give the Office or the Treasury Department general supervisory or regulatory authority over the business of insurance.

The Director must submit a report to the President and to Congress by September 30th of each year on the insurance industry and any actions taken by the Office regarding preemption of inconsistent State insurance measures.

The Director must also conduct a study and submit a report to Congress within 18 months of the enactment of this section on how to modernize and improve the system of insurance regulation in the United States. The study and report must be guided by the following six considerations: (1) systemic risk regulation with respect to insurance; (2) capital standards and the relationship between capital allocation and liabilities; (3) consumer protection for insurance products and practices; (4) degree of national uniformity of state insurance regulation; (5) regulation of insurance companies and affiliates on a consolidated basis; and (6) international coordination of insurance regulation. The study and report must also examine additional factors as set forth in this section.

This section also authorizes the Secretary of the Treasury to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States. However, nothing in this section will be construed to affect the development and coordination of the United States international trade policy or the administration of the United States trade agreements program. The Secretary will consult with the United State Trade Representative on the negotiation of International Insurance Agreements on Prudential Measures, including prior to initiating and concluding any such agreements.

Subtitle B – State-Based Insurance Reform

Section 511. Short Title. This subtitle may be cited as the "Nonadmitted and Reinsurance Reform Act of 2009".

Section 512. Effective Date

Section-by-Section Summary

Part I – Nonadmitted Insurance

Sec. 521. Reporting, Payment, and Allocation of Premium Taxes

Gives the home State of the insured (policyholder) sole regulatory authority over the collection and allocation of premium tax obligations related to nonadmitted insurance (also known as surplus lines insurance). States are authorized to enter into a compact or other agreement to establish uniform allocation and remittance procedures. Insured's home State may require surplus lines brokers and insureds to file tax allocation reports detailing portion of premiums attributable to properties, risks, or exposures located in each state.

Sec. 522. Regulation of Nonadmitted Insurance by Insured's Home State

Unless otherwise provided, insured's home State has sole regulatory authority over nonadmitted insurance, including broker licensing.

Sec. 523. Participation in National Producer Database

State may not collect fees relating to licensing of nonadmitted brokers unless the State participates in the national insurance producer database of the National Association of Insurance Commissioners (NAIC) within 2 years of enactment of this subtitle.

Sec. 524. Uniform Standards For Surplus Lines Eligibility

Streamlines eligibility requirements for nonadmitted insurance providers with the eligibility requirements set forth in the NAIC's Nonadmitted Insurance Model Act.

Sec. 525. Streamlined Application for Commercial Purchasers

Allows exempt commercial purchasers, as defined in section 527, easier access to the non-admitted marketplace by waiving certain requirements.

Sec. 526. GAO Study of Nonadmitted Insurance Market

The Comptroller General 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 market. The Comptroller General shall consult with the NAIC and produce this report within 30 months after the effective date.

Sec. 527. Definitions

Among others, defines Exempt Commercial Purchasers and details the qualifications necessary to qualify as such for the purposes of section 525.

Part II – Reinsurance

Sec. 531. Regulation of Credit for Reinsurance and Reinsurance Agreements

Prohibits non-domiciliary States from denying credit for reinsurance if the State of domicile of a ceding insurer is an NAIC-accredited State or has solvency requirements substantially similar to those

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required for NAIC accreditation. Prohibits non-domiciliary States from restricting or eliminating the rights of reinsurers to resolve disputes pursuant to contractual arbitration clauses, prohibits non-domiciliary States from ignoring or eliminating contractual agreements on choice of law determinations, and prohibits non-domiciliary States from enforcing reinsurance contracts on terms different from those set forth in the reinsurance contract.

Sec. 532. Solvency Regulation

State of domicile of the reinsurer is solely responsible for regulating the financial solvency of the reinsurer. Non-domiciliary States may not require reinsurer to provide any additional financial information other than the information required by State of domicile. Non-domiciliary States are required to be provided with copies of the financial information that is required to be filed with the State of domicile.

Sec. 533. Definitions

Among others, defines a reinsurer and clarifies how a insurer could be determined as a reinsurer under the laws of the state of domicile.

Part III – Rule of Construction

Sec. 541. Rule of Construction

Clarifies that this subtitle will not modify, impair, or supersede the application of antitrust laws, confirms that any potential conflict between this subtitle and the antitrust laws will be resolved in favor of the operation of the antitrust laws.

Sec. 542. Severability

States that if any section, subsection, or application of this subtitle is held to be unconstitutional, the remainder of the subtitle shall not be affected.

Section-by-Section Summary

Title VI – Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2009

Section 601. Short Title

The short title is "Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2010."

Section 602. Definitions

This section defines the key term "commercial firm."

Section 603. Moratorium and Study on Treatment of Credit Card Banks, Industrial Loan Companies, Trust Banks and Certain Other Companies as Bank Holding Companies under the Bank Holding Company Act

This section prohibits the Federal Deposit Insurance Corporation from approving a new application for deposit insurance for an industrial loan company, credit card bank, or trust bank that is owned or controlled by a commercial firm, until three years from the date of enactment of this Act. In addition, within 18 months of enactment of this Act, the Comptroller General must submit a report to Congress analyzing whether it is necessary to eliminate the exceptions in the Bank Holding Company Act of 1956 (BHCA) for credit card banks, industrial loan companies, trust banks, thrifts, and certain other companies, in order to strengthen the safety and soundness of these institutions or the stability of the financial system.

Section 604. Reports and Examinations of Bank Holding Companies; Regulation of Functionally Regulated Subsidiaries

This section removes constraints in the BHCA on the ability of the appropriate Federal banking agency (AFBA) for a bank holding company to obtain reports from, examine, and regulate subsidiaries of bank holding companies. This section also requires the AFBA for the holding company to coordinate with other Federal and state regulators of subsidiaries of the holding company, to the fullest extent possible, to avoid duplication of examination activities, reporting requirements, and requests for information.

This section also requires the AFBA for the holding company to consider risks to the stability of the United States banking or financial system when reviewing bank holding company proposals to engage in mergers, acquisitions, or nonbank activities or financial holding company proposals to engage in activities that are financial in nature. A financial holding company also may not engage in certain activities that are financial in nature without the approval of the AFBA for the holding company if they involve the acquisition of assets that exceed $25 billion.

In addition, the section amends the Home Owners' Loan Act to clarify the authority of the AFBA of a savings and loan holding company to examine and require reports from the savings and loan holding company and its subsidiaries. It also directs the AFBA to coordinate its supervisory activities with other Federal and state regulators of the holding company subsidiaries.

Section-by-Section Summary

Section 605. Assuring Consistent Oversight of Permissible Activities of Depository Institution Subsidiaries of Holding Companies

This section requires the "lead Federal banking agency" for each depository institution holding company to examine the bank permissible activities of each non-depository institution subsidiary (other than a functionally regulated subsidiary) of the depository institution holding company to determine whether the activities present safety and soundness risks to any depository institution subsidiary of the holding company. For purposes of this section, "lead Federal banking agency" is defined as (1) the Office of the Comptroller of the Currency for holding companies with Federally-chartered depository institution subsidiaries, or where total consolidated assets in its Federally-chartered depository institution subsidiaries exceed those in its state-chartered depository institution subsidiaries or (2) the Federal Deposit Insurance Corporation for holding companies with state-chartered depository institution subsidiaries, or where total consolidated assets in its state-chartered depository institution subsidiaries exceed those in its Federally-chartered depository institution subsidiaries. The "lead Federal banking agency" can recommend that the Board of Governors of the Federal Reserve System (Board) take enforcement action against a non-depository subsidiary where the Board is the holding company regulator. If the Board does not take enforcement action within 60-days of receiving the recommendation, the "lead Federal banking agency" may take enforcement action against the non-depository institution.

Section 606. Requirements for Financial Holding Companies to Remain Well Capitalized and Well Managed

This section amends the BHCA to require all financial holding companies engaging in expanded financial activities to remain well capitalized and well managed.

Section 607. Standards for Interstate Acquisitions and Mergers

This section raises the capital and management standards for bank holding companies engaging in interstate bank acquisitions by requiring them to be well capitalized and well managed. In addition, interstate mergers of banks will only be permitted if the resulting bank is well capitalized and well managed.

Section 608. Enhancing Existing Restrictions on Bank Transactions with Affiliates

This section amends section 23A of the Federal Reserve Act by, among other things, defining an investment fund for which the member bank is an investment adviser as an affiliate of the member bank and adding derivative transaction credit exposure to the list of covered transactions.

Section 609. Eliminating Exceptions for Transactions with Financial Subsidiaries

This section amends section 23A of the Federal Reserve Act by eliminating the special treatment for transactions with financial subsidiaries.

Section 610. Lending Limits Applicable to Credit Exposure on Derivative Transactions, Repurchase Agreements, Reverse Repurchase Agreements, and Securities Lending and Borrowing Transactions

This section tightens national bank lending limits by treating credit exposures on derivatives, repurchase agreements, and reverse repurchase agreements as extensions of credit for the purposes of national bank lending limits.

Section-by-Section Summary

Section 611. Application of National Bank Lending Limits to Insured State Banks

This section requires all insured depository institutions to comply with national bank lending limits.

Section 612. Restriction on Conversions of Troubled Banks and Savings Associations

This section prohibits conversions from a national bank charter to a state bank or savings association charter or vice versa during any time in which a bank or savings association is subject to a cease and desist order, other formal enforcement action, or memorandum of understanding. It also prohibits the conversion of a federal savings association to a national or state bank or state savings association under these circumstances.

Section 613. De Novo Branching into States

This section expands the ability of a national bank or state bank to establish a de novo branch in another state.

Section 614. Lending Limits to Insiders

This section expands the type of transactions subject to insider lending limits to include derivatives transactions, repurchase agreements, reverse repurchase agreements, and securities lending or borrowing transactions.

Section 615. Limitations on Purchases of Assets from Insiders

This section prohibits insured depository institutions from entering into asset purchase or sales transactions with its executive officers, directors, or principal shareholders or a related interest unless the transaction is on market terms and, if the transaction represents more than ten percent of the capital and surplus of the institution, has been approved in advance by a majority of the disinterested members of the board.

Section 616. Rules Regarding Capital Levels of Holding Companies

This section clarifies that the Board may adopt rules governing the capital levels of bank and savings and loan holding companies. In addition, it directs the AFBA for a bank or savings and loan holding company to require the company to serve as a source of financial strength for any insured depository institution that the company owns or controls. If an insured depository institution is not the subsidiary of a bank or savings and loan holding company, the AFBA for the insured depository institution must require any company that owns or controls the insured depository institution to serve as a source of financial strength for the institution.

Section 617. Elimination of Elective Investment Bank Holding Company Framework

This section eliminates the elective Investment Bank Holding Company Framework in the Securities Exchange Act of 1934.

Section 618. Securities Holding Companies.

This section permits a securities holding company that is required by a foreign regulator to be subject to comprehensive consolidated supervision to register with the Board to become a "supervised securities holding company." To qualify, a securities holding company must own or control one or more brokers or dealers registered with the Securities and Exchange Commission, and cannot be a nonbank financial company supervised by the Board, an affiliate of an insured bank or savings association, a

Section-by-Section Summary

foreign bank, or subject to comprehensive consolidated supervision by a foreign regulator. This section describes the manner in which the Board must supervise and regulate "supervised securities holding companies," including through issuance of regulations that prescribe capital adequacy and other risk management standards to protect the safety and soundness of the company and to address risks posed to financial stability by such companies.

Section 619. Restrictions on Capital Market Activity by Banks and Bank Holding Companies

Subject to recommendations from the Financial Stability Oversight Council, and to joint rules by the federal banking agencies, an insured depository institution, a company that controls an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act, and any subsidiary of such institution or company, will be prohibited from proprietary trading, sponsoring and investing in hedge funds and private equity funds, and from having certain financial relationships with those hedge funds or private equity funds for which they serve as investment manager or investment adviser. A nonbank financial institution supervised by the Board of Governors that engages in proprietary trading, or sponsoring or investing in hedge funds and private equity funds will be subject to Board rules imposing additional capital requirements and quantitative limits. These prohibitions and restrictions will be subject to certain exemptions.

The Council recommendations will be included as part of a study to assess the extent to which the prohibitions, limitations, definitions, and requirements of section 619 will promote several goals, including the safety and soundness of depositories and their affiliates and protecting taxpayers from loss. The Council may recommend modifications to the terms, prohibitions, definition, limitations and requirements included in section 619 in order to more effectively implement the terms of the section. The Council will have 6 months to write the study, and the appropriate Federal bank agencies will have 9 months in which to issue regulations that reflect the recommendations of the Council. Prohibitions or limitations on activities that the rules mandate go into effect two years after the rules are finalized and may be extended.

Section 620. Concentration Limits on Large Financial Firms

Subject to recommendations from the Financial Stability Oversight Council, a financial company may not merge or consolidate with, acquire all or substantially all of the assets of, or otherwise acquire control of, another company, if the total consolidated liabilities of the acquiring financial company upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the calendar year preceding the transaction.

The Council recommendations will be included in a study of the extent to which the concentration limit under section 620 would affect financial stability, moral hazard in the financial system, the efficiency and competitiveness of United States financial firms and financial markets, and the cost and availability of credit and other financial services to households and businesses in the United States. The Council shall make recommendations regarding any modifications to the concentration limit that the Council determines would more effectively implement the section. The Council will have 6 months to write the study, and the Board of Governors of the Federal Reserve will have 9 months in which to issue regulations that reflect the recommendations of the Council.

Section-by-Section Summary

Title VII—Over-the-Counter Derivatives Markets Act of 2009

Section 701. Short Title

Section 701. Findings and Purposes

This section describes the findings and purposes of the Over-the-Counter Derivatives Markets Act of 2009. In order to mitigate costs and risks to taxpayers and the financial system, this Act establishes regulations for the over-the-counter derivatives market including requirements for clearing, exchange trading, capital, margin, and reporting.

Subtitle A — Regulation of Swap Markets

Section 711. Definitions

This section adds new definitions to the Commodity Exchange Act and directs the Commodity Futures Trading Commission ("CFTC") and Securities and Exchange Commission ("SEC") to jointly adopt uniform interpretations. The defined terms include "swap," "swap dealer," "swap repository," and "major swap participant."

This section also establishes guidelines for joint CFTC and SEC rulemaking authority under this Act. This section requires that rules and regulations prescribed jointly under this Act by the CFTC and SEC shall be uniform and shall treat functionally or economically equivalent products similarly. This section authorizes the CFTC and SEC to prescribe rules defining "swap" and "security-based swap" to prevent evasions of this Act. This section also requires the CFTC and SEC to prescribe joint rules in a timely manner and authorizes the Financial Stability Oversight Council to resolve disputes if the CFTC and SEC fail to jointly prescribe rules.

Section 712. Jurisdiction

This section removes limitations on the CFTC's jurisdiction with respect to certain derivatives transactions, including swap transactions between "eligible contract participants."

Section 713. Clearing

Subsection (a). Clearing Requirement

This subsection requires clearing of all swaps that are accepted for clearing by a registered derivatives clearing organization unless one of the parties to the swap qualifies for an exemption. This subsection requires cleared swaps that are accepted for trading to be executed on a designated contract market or on a registered alternative swap execution facility. The CFTC may exempt a party to a swap from the clearing and exchange trading requirement if one of the counterparties to the swap is not a swap dealer or major swap participant and does not meet the eligibility requirements of any derivatives clearing organization that clears the swap. The CFTC must consult the Financial Stability Oversight Council before issuing an exemption. Requires a party to a swap to submit the swap for clearing if a counterparty requests that the such swap be cleared and the swap is accepted for clearing by a registered derivatives clearing organization.

Section-by-Section Summary

This subsection requires derivatives clearing organizations to seek approval from the CFTC prior to clearing any group or category of swaps and directs the CFTC and SEC to jointly adopt rules to further identify any group or category of swaps acceptable for clearing based on specified criteria; authorizes the CFTC and SEC jointly to prescribe rules or issue interpretations as necessary to prevent evasions of section 2(j) of the Commodity Exchange Act; and requires parties who enter into non-cleared swaps to report such transactions to a swap repository or the CFTC.

Subsection (b). Derivatives Clearing Organizations

This subsection requires derivatives clearing organizations that clear swaps to register with the CFTC, and directs the CFTC and SEC (in consultation with the appropriate federal banking agencies) to jointly adopt uniform rules governing entities registered as derivatives clearing organizations for swaps under this subsection and entities registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 ("Exchange Act"). This subsection also permits dual registration of a derivatives clearing organization with the CFTC and SEC or appropriate banking agency, authorizes the CFTC to exempt from registration under this subsection a derivatives clearing organization that is subject to comparable, comprehensive supervision and regulation on a consolidated basis by another regulator, and provides transition for existing clearing agencies. This subsection specifies core regulatory principles for derivatives clearing organizations, including standards for minimum financial resources, participant and product eligibility, risk management, settlement procedures, safety of member or participant funds and assets, rules and procedures for defaults, rule enforcement, system safeguards, reporting, recordkeeping, disclosure, information sharing, antitrust considerations, governance arrangements, conflict of interest mitigation, board composition, and legal risk. This subsection also requires a derivatives clearing organization to provide the CFTC with all information necessary for the CFTC to perform its responsibilities.

Subsection (c). Legal Certainty for Identified Banking Products

This subsection clarifies that the Federal banking agencies, rather than the CFTC or SEC, retain regulatory authority with respect to identified banking products, unless a Federal banking agency, in consultation with the CFTC and SEC, determines that a product has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act, Securities Act of 1933, or Exchange Act.

Section 714. Public Reporting of Aggregate Swap Data

This section directs the CFTC (or a derivatives clearing organization or swap repository designated by the CFTC) to make available to the public, in a manner that does not disclose the business transactions or market positions of any person, aggregate data on swap trading volumes and positions.

Section 715. Swap Repositories

This section describes the duties of a swap repository as accepting, maintaining, and making available swap data as prescribed by the CFTC; makes registration with the CFTC voluntary for swap repositories; and subjects registered swap repositories to CFTC inspection and examination. This section also directs the CFTC and SEC to jointly adopt uniform rules governing entities that register with the CFTC as swap repositories and entities that register with the SEC as security-based swap repositories, and authorizes the CFTC to exempt from registration any swap repository subject to comparable, comprehensive supervision or regulation by another regulator.

Section-by-Section Summary

Section 716. Reporting and Recordkeeping

This section requires reporting and recordkeeping by any person who enters into a swap that is not cleared through a registered derivatives clearing organization or reported to a swap repository.

Section 717. Registration and Regulation of Swap Dealers and Major Swap Participants

This section requires swap dealers and major swap participants to register with the CFTC, directs the CFTC and SEC to jointly adopt rules to mitigate conflicts, and directs the CFTC and SEC to jointly prescribe uniform rules for entities that register with the CFTC as swap dealers or major swap participants and entities that register with the SEC as security-based swap dealers or major security-based swap participants. This section also requires a registered swap dealer or major swap participant to (1) meet such minimum capital and margin requirements as the primary financial regulatory agency (for banks) or CFTC and SEC (for nonbanks) shall jointly prescribe; (2) meet reporting and recordkeeping requirements; (3) conform with business conduct standards; (4) conform with documentation and back office standards; and (5) comply with requirements relating to position limits, disclosure, conflicts of interest, and antitrust considerations. The Commission may exempt swap dealers and major swap participants from the margin requirement according to certain criteria and pursuant to consultation with the Financial Stability Oversight Council. If a party requests margin for an exempt swap, the exemption shall not apply. Regulators may permit the use of non-cash collateral to meet margin requirements.

Section 718. Segregation of Assets Held as Collateral in Swap Transactions

For cleared swaps, this section requires that swap dealers, futures commission merchants, and derivatives clearing organizations segregate funds held to margin, guarantee, or secure the obligations of a counterparty under a cleared swap in a manner that protects their property. In addition, counterparties to an un-cleared swap will be able to request that any margin posted in the transaction be held by an independent third party custodian. Assets must be segregated on a non-discriminatory bases and may not be re-hypothecated.

Section 719. Conflicts of Interest

This section also directs the CFTC to require futures commission merchants and introducing brokers to implement conflict-of-interest systems and procedures relating to research activities and trading.

Section 720. Alternative Swap Execution Facilities

This section defines alternative swap execution facility and requires a facility for the trading of swaps to register with the CFTC as an alternative swap execution facility ("ASEF"), subject to certain criteria relating to deterrence of abuses, trading procedures, and financial integrity of transactions. This section also establishes core regulatory principles for ASEFs relating to enforcement, anti-manipulation, monitoring, information collection and disclosure, position limits, emergency powers, recordkeeping and reporting, antitrust considerations, and conflicts of interest. This section directs the CFTC and SEC to jointly prescribe rules governing the regulation of alternative swap execution facilities, and authorizes the CFTC to exempt from registration under this section an alternative swap execution facility that is subject to comparable, comprehensive supervision and regulation by another regulator.

Section 721. Derivatives Transaction Execution Facilities and Exempt Boards of Trade

Section-by-Section Summary

This section repeals the existing provisions of the Commodity Exchange Act relating to derivatives transaction execution facilities and exempt boards of trade.

Section 722. Designated Contract Markets

This section requires a board of trade, in order to maintain designation as a contract market, to demonstrate that it provides a competitive, open, and efficient market for trading; has adequate financial, operational, and managerial resources; and has established robust system safeguards to help ensure resiliency.

Section 723. Margin

This section authorizes the CFTC to set margin levels for registered entities.

Section 724. Position Limits

This section authorizes the CFTC to establish aggregate position limits across commodity contracts listed by designated contract markets, commodity contracts traded on a foreign board of trade that provides participants located in the United States with direct access to its electronic trading and order matching system, and swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

Section 725. Enhanced Authority over Registered Entities

This section enhances the CFTC's authority to establish mechanisms for complying with regulatory principles and to review and approve new contracts and rules for registered entities.

Section 726. Foreign Boards of Trade

This section authorizes the CFTC to adopt rules and regulations requiring registration by, and prescribing registration requirements and procedures for, a foreign board of trade that provides members or other participants located in the United States direct access to the foreign board of trade's electronic trading and order matching system. This section also prohibits foreign boards of trade from providing members or other participants located in the United States with direct access to the electronic trading and order matching systems of the foreign board of trade with respect to a contract that settles against the price of a contract listed for trading on a CFTC-registered entity unless the foreign board of trade meets, in the CFTC's determination, certain standards of comparability to the requirements applicable to U.S. boards of trade. This section also provides legal certainty for certain contracts traded on or through a foreign board of trade.

Section 727. Legal Certainty for Swaps

This section clarifies that no hybrid instrument sold to any investor and no transaction between eligible contract participants shall be void based solely on the failure of the instrument or transaction to comply with statutory or regulatory terms, conditions, or definitions.

Section 728. FDICIA Amendments

Makes conforming amendments to the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") to reflect that the definition of "over-the- counter derivative instrument" under FDICIA no longer includes swaps or security-based swaps.

Section-by-Section Summary

Section 729. Primary Enforcement Authority

This section clarifies that the CFTC shall have primary enforcement authority for all provisions of Subtitle A of this Act, other than new Section 4s(e) of the Commodity Exchange Act (as added by Section 717 of this Act, relating to capital and margin requirements for swap dealers and major swap participants), for which the primary financial regulatory agency shall have exclusive enforcement authority with respect to banks and branches or agencies of foreign banks that are swap dealers or major swap participants. This section also provides the primary financial regulatory agency with backstop enforcement authority with respect to the nonprudential requirements of the new Section 4s of the Commodity Exchange Act (relating to registration and regulation of swap dealers and major swap participants) if the CFTC does not initiate an enforcement proceeding within 90 days of a written recommendation by the primary financial regulatory agency.

Section 730. Enforcement

This section clarifies the enforcement authority of the CFTC with respect to swaps and swap repositories, and of the primary financial regulatory agency with respect to swaps, swap dealers, major swap participants, swap repositories, alternative swap execution facilities, and derivatives clearing organizations.

Section 731. Retail Commodity Transactions

This section clarifies CFTC jurisdiction with respect to certain retail commodity transactions.

Section 732. Large Swap Trader Reporting

This section requires reporting and recordkeeping with respect to large swap positions in the regulated markets.

Section 733. Other Authority

This section clarifies that this title, unless otherwise provided by its terms, does not divest any appropriate federal banking agency, the CFTC, the SEC, or other federal or state agency of any authority derived from any other applicable law.

Section 734. Antitrust

This section clarifies that nothing in this title shall be construed to modify, impair, or supersede antitrust law.

Subtitle B — Regulation of Security-Based Swap Markets

Section 751. Definitions Under the Securities Exchange Act of 1934

This section adds new definitions to the Securities Exchange Act of 1934 and directs the CFTC and SEC to jointly adopt uniform interpretations. The defined terms include “security-based swap,” “security-based swap dealer,” “security-based swap repository,” “mixed swap,” and “major security-based swap participant.”

Section-by-Section Summary

This section also establishes guidelines for joint CFTC and SEC rulemaking authority under this Act. This section requires that rules and regulations prescribed jointly under this Act by the CFTC and SEC shall be uniform and shall treat functionally or economically equivalent products similarly. This section authorizes the CFTC and SEC to prescribe rules defining "swap" and "security-based swap" to prevent evasions of this Act. This section also requires the CFTC and SEC to prescribe joint rules in a timely manner and authorizes the Financial Stability Oversight Council to resolve disputes if the CFTC and SEC fail to jointly prescribe rules.

Section 752. Repeal of Prohibition on Regulation of Security-Based Swaps

This section repeals provisions enacted as part of the Gramm-Leach-Bliley Act and the Commodity Futures Modernization Act that prohibit the SEC from regulating security-based swaps.

Section 753. Amendments to the Securities Exchange Act of 1934

Subsection (a). Clearing for Security-Based Swaps

This subsection requires clearing of all security-based swaps that are accepted for clearing by a registered clearing agency unless one of the parties to the swap qualifies for an exemption. This subsection requires cleared security-based swaps that are accepted for trading to be executed on a registered national securities exchange or on a registered alternative swap execution facility. The SEC may exempt a security-based swap from the clearing and exchange trading requirement if one of the counterparties to the swap is not a security-based swap dealer or major swap participant and does not meet the eligibility requirements of any clearing agency that clears the swap. The SEC must consult the Financial Stability Oversight Council before issuing an exemption. Requires a party to a security-based swap to submit the swap for clearing if a counterparty requests that the swap be cleared and the swap is accepted for clearing by a registered clearing agency.

This subsection requires clearing agencies to seek approval from the SEC prior to clearing any group or category of security-based swaps and directs the CFTC and SEC to jointly adopt rules to further identify any group or category of security-based swaps acceptable for clearing based on specified criteria; authorizes the CFTC and SEC jointly to prescribe rules or issue interpretations as necessary to prevent evasions of section 3A of the Exchange Act; requires parties who enter into non-cleared swaps to report such transactions to a swap repository or the CFTC; and directs the SEC and CFTC to jointly adopt uniform rules governing entities registered with the CFTC as derivatives clearing organizations for swaps and with the SEC as clearing agencies for security-based swaps.

Subsection (b). Alternative Swap Execution Facilities

This subsection defines alternative swap execution facility and requires facilities for the trading of security-based swaps to register with the SEC as ASEFs, subject to certain criteria relating to deterrence of abuses, trading procedures, and financial integrity of transactions. This subsection also establishes core regulatory principles for ASEFs relating to enforcement, anti-manipulation, monitoring, information collection and disclosure, position limits, emergency powers, recordkeeping and reporting, antitrust considerations, and conflicts of interest. This subsection directs the SEC and CFTC to jointly prescribe rules governing the regulation of alternative swap execution facilities, and authorizes the SEC to exempt from registration under this subsection an alternative swap execution facility that is subject to comparable, comprehensive supervision and regulation by another regulator.

Section-by-Section Summary

Subsection (c). Trading in Security-Based Swap Agreements

This subsection prohibits parties who are not eligible contract participants (as defined in the Commodity Exchange Act) from effecting security-based swap transactions off of a registered national securities exchange.

Subsection (d). Registration and Regulation of Swap Dealers and Major Swap Participants

This subsection requires security-based swap dealers and major security-based swap participants to register with the SEC, and directs the SEC and CFTC to jointly prescribe uniform rules for entities that register with the SEC as security-based swap dealers or major security-based swap participants and entities that register with the CFTC as swap dealers or major swap participants. This subsection also requires security-based swap dealers and major security-based swap participants to (1) meet such minimum capital and margin requirements as the primary financial regulatory agency (for banks) or CFTC and SEC (for nonbanks) shall jointly prescribe; (2) meet reporting and recordkeeping requirements; (3) conform with business conduct standards; (4) conform with documentation and back office standards; and (5) comply with requirements relating to position limits, disclosure, conflicts of interest, and antitrust considerations. The Commission may exempt security-based swap dealers and major swap participants from the margin requirement according to certain criteria and pursuant consultation with the Financial Stability Oversight Council. If a party requests margin for an exempt swap, the exemption shall not apply. Regulators may permit the use of non-cash collateral to meet margin requirements.

Subsection (e). Additions of Security-Based Swaps to Certain Enforcement Provisions

This subsection adds security-based swaps to the Exchange Act's list of financial instruments that a person may not use to manipulate security prices.

Subsection (f). Rulemaking Authority to Prevent Fraud, Manipulation, and Deceptive Conduct in Security-Based Swaps

This subsection prohibits fraudulent, manipulative, and deceptive acts involving security-based swaps and security-based swap agreements, and directs the SEC to prescribe rules and regulations to define and prevent such conduct.

Subsection (g). Position Limits and Position Accountability for Security-Based Swaps and Large Trader Reporting

As a means to prevent fraud and manipulation, this subsection authorizes the SEC to (1) establish limits on the aggregate number or amount of positions that any person or persons may hold across security-based swaps that perform or affect a significant price discovery function with respect to regulated markets; (2) exempt from such limits any person, class of persons, transaction, or class of transactions; and (3) direct a self-regulatory organization to adopt rules relating to position limits for security-based swaps. This subsection also requires reporting and recordkeeping with respect to large security-based swap positions in regulated markets.

Subsection (h). Public Reporting and Repositories for Security-Based Swap Agreements

This subsection requires the SEC or its designee to 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. This subsection also describes the duties of a security-based swap repository as accepting and maintaining security-based swap data as prescribed by the SEC, makes SEC registration for security-based swap repositories voluntary, and subjects registered security-based swap repositories to SEC inspection and examination. This subsection directs the SEC and CFTC to jointly adopt uniform rules governing entities that register with the SEC as security-based swap repositories and entities that register with the CFTC as swap repositories and authorizes the SEC to exempt from registration any security-based swap repository subject to comparable, comprehensive supervision or regulation by another regulator.

Section 754. Segregation of Assets Held as Collateral in Security-Based Swap Transactions

For cleared swaps, this section requires that security-based swap dealers or clearing agencies segregate funds held to margin, guarantee, or secure the obligations of a counterparty in a manner that protects their property. In addition, counterparties to an un-cleared swap will be able to request that any margin posted in the transaction be held by an independent third party custodian. Assets must be segregated on a non-discriminatory bases and may not be re-hypothecated.

Section 755. Reporting and Recordkeeping

This section requires reporting and recordkeeping by any person who enters into a security-based swap that is not cleared with a registered clearing agency or reported to a security-based swap repository. This section also includes security-based swaps within the scope of certain reporting requirements under Sections 13 and 16 of the Exchange Act.

Section 756. State Gaming and Bucket Shop Laws

This section clarifies the applicability of certain state laws to security-based swaps.

Section 757. Amendments to the Securities Act of 1933; Treatment of Security-Based Swaps

This section amends the Securities Act of 1933 to include security-based swaps within the definition of "security." This section also amends Section 5 of the Securities Act of 1933 to prohibit offers to sell or purchase a security-based swap without an effective registration statement to any person other than an eligible contract participant (as defined in the Commodity Exchange Act).

Section 758. Other Authority

This section clarifies that this title, unless otherwise provided by its terms, does not divest any appropriate federal banking agency, the SEC, the CFTC, or other federal or state agency of any authority derived from any other applicable law.

Section 758. Jurisdiction

This section clarifies that the SEC shall not have authority to grant exemptions from the provisions of this Act, except as expressly authorized by this Act; provides the SEC with express authorization to use any authority granted under subsection (a) to exempt any person or transaction from any provision of this title that applies to such person or transaction solely because a security-based swap is a security under section 3(a).

Subtitle C — Other Provisions

Section-by-Section Summary

Section 761. International Harmonization

This section requires regulators to consult and coordinate with international authorities on the establishment of consistent standards for the regulation of swaps and security-based swaps.

Section 762. Interagency Cooperation

This section establishes a SEC-CFTC Joint Advisory Committee to monitor and develop solutions emerging in the swaps and security-based swaps markets, a SEC-CFTC Joint Enforcement Task Force to improve market oversight, a SEC-CFTC-Federal Reserve Trading and Markets Fellowship Program to provide cross-training among agency staff about the interaction between financial markets activity and the real economy, SEC-CFTC cross-agency enforcement training and education, and detailing of staff between the SEC and CFTC.

Section 763. Study and Report on Implementation

This section requires the GAO to conduct on study on the implementation of this Act within one year of the date of enactment.

Section 764. Recommendations for Changes to Insolvency Laws

This section requires the SEC, CFTC, and FIRA to make recommendations to Congress within 180 days of enactment regarding Federal insolvency laws and their impact on various swaps and security-based swaps activity.

Section 765. Effective Date

This section specifies that this title shall become effective 180 days after the date of enactment.

Section-by-Section Summary

Title VIII – Payment, Clearing, and Settlement Supervision Act of 2009

Section 801. Short Title

Section 802. Findings and Purposes

This section describes the findings and purposes of the Payment, Clearing, and Settlement Supervision Act of 2009. In order to mitigate systemic risk in the financial system and promote financial stability, this Act provides the Financial Stability Oversight Council a role in identifying systemically important financial market utilities and the Board of Governors of the Federal Reserve System ("Board") with an enhanced role in supervising risk management standards for systemically important financial market utilities and for systemically important payment, clearing, and settlement activities conducted by financial institutions.

Section 803. Definitions

Section 804. Designation of Systemic Importance

This section authorizes the Financial Stability Oversight Council to designate financial market utilities or payment, clearing, or settlement activities as systemically important, and establishes procedures and criteria for making and rescinding such a designation. Criteria for designation and rescission of designation include the aggregate monetary value of transactions processed and the effect that a failure of a financial market utility or payment, clearing, or settlement activity would have on counterparties and the financial system.

Section 805. Standards for Systemically Important Financial Market Utilities and Payment, Clearing, or Settlement Activities

This section authorizes the Board, in consultation with the Financial Stability Oversight Council and the appropriate supervisory agencies, to prescribe risk management standards governing the operations of designated financial market utilities and the conduct of designated payment, clearing, and settlement activities by financial institutions. This section also establishes the objectives, principles, and scope of such standards.

Section 806. Operations of Designated Financial Market Utilities

This section authorizes a Federal Reserve bank to establish and maintain an account for a designated financial market utility and allows the Board to modify or provide an exemption from reserve requirements that would otherwise be applicable to the designated financial market utility. This section requires a designated financial market utility to provide advance notice of and obtain approval of material changes to its rules, procedures, or operations.

Section 807. Examination and Enforcement Actions Against Designated Financial Market Utilities

This section requires the supervisory agency to conduct safety and soundness examinations of a designated financial market utility at least annually and authorizes the supervisory agency to take enforcement actions against the utility. This section also allows the Board to participate in examinations by, and make recommendations to, other supervisors and designates the Board as the supervisory agency for designated financial market utilities that do not otherwise have a supervisory agency. The Board is

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also authorized to take enforcement actions against a designated financial market utility if there is an imminent risk of substantial harm to financial institutions or the broader financial system.

Section 808. Examination and Enforcement Actions Against Financial Institutions Engaged in Designated Activities

This section authorizes the primary financial regulatory agency to examine a financial institution engaged in designated payment, clearing, or settlement activities and to enforce the provisions of this Act and the rules prescribed by the Board against such an institution. This section also requires the Board to collaborate with the primary financial regulatory agency to ensure consistent application of the Board's rules. The Board is granted back-up authority to conduct examinations and take enforcement actions if it has reasonable cause to believe a violation of its rules or of this Act has occurred.

Section 809. Requests for Information, Reports, or Records

This section authorizes the Financial Stability Oversight Council to collect information from financial market utilities and financial institutions engaged in payment, clearing, or settlement activities in order to assess systemic importance. Upon a designation by the Financial Stability Oversight Council, the Board may require submission of reports or data by systemically important financial market utilities or financial institutions engaged in activities designated to be systemically important. This section also facilitates sharing of relevant information and coordination among financial regulators, with protections for confidential information.

Section 810. Rulemaking

This section authorizes the Board and the Financial Stability Oversight Council to prescribe such rules and issue such orders as may be necessary to administer and carry out the purposes of this title and prevent evasions thereof.

Section 811. Other Authority

This section clarifies that this Act, unless otherwise provided by its terms, does not divest any appropriate financial regulatory agency, supervisory agency, or other Federal or State agency of any authority derived from any other applicable law.

Section 812. Effective Date

This section specifies that this Act shall be effective as of the date of enactment.

Section-by-Section Summary

Title IX – Investor Protections and Improvements to the Regulations of Securities

Subtitle A – Increasing Investor Protection

Section 911. Investor Advisory Committee Established

Section 911 establishes within the Commission the Investor Advisory Committee to advise and consult with the Commission on regulatory priorities; issues relating to securities, trading, fee structures and the effectiveness of disclosures; investor protection; and initiatives to promote investor confidence. The Commission shall be composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and between 12 and 22 members who represent the interests of individual investors, institutional investors, and pension fund investors.

The Committee shall elect from among themselves a Chairman, Vice Chairman, Secretary, and Assistant Secretary, each of whom shall serve a 3 year term. The Committee shall meet at least twice per year. The Commission shall provide the Committee with the staff necessary to fulfill its mission.

The Commission must publicly respond to Committee recommendations.

Section 912. Clarification of Authority of the Commission to Engage in Consumer Testing

Section 912 clarifies the Commission's authority to gather information from and communicate with investors and engage in such temporary programs as the Commission determines are in the public interest for the purpose of evaluating any rule or program of the Commission.

Section 913. Study and Rulemaking Regarding Obligations of Brokers, Dealers, and Investment Advisers

Section 913 directs the SEC to conduct a study of the effectiveness of existing legal or regulatory standards of care for brokers, dealers, and investment advisers for providing personalized investment advice and recommendations about securities to retail customers imposed by the Commission and FINRA, and whether there are legal or regulatory gaps or overlap in legal or regulatory standards in the protection of retail customers. The section also requires the SEC to issue a report within one year that considers public input. If this study identifies any gaps or overlap in the legal or regulatory standards in the protection of retail customers relating to the standards of care for brokers, dealers, and investment advisers, the SEC shall commence a rulemaking within two years to address such regulatory gaps and overlap that can be addressed by rule, using its existing authority under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940.

Section 914. Creation of Office of the Investor Advocate

Section 914 creates, within SEC, the Office of Investor Advocate. The head of the Office will be appointed by the Chairman (in consultation with the Commission) and report to the Chairman. The Advocate will assist retail investors in resolving significant problems they have with the Commission or self-regulatory organizations; identify areas in which investors would benefit from changes in the regulations of the Commission or SROs; identify problems investors have with financial services and investment products; and recommend to the Commission and to Congress legislative, administrative, or personnel changes to mitigate problems it identifies.

Section 915. Streamlining of Filing Procedures for Self-Regulatory Organizations

Section-by-Section Summary

Section 915 attempts to make the SRO filing procedures more efficient. The Section states that within 45 days of proposed SRO rule changes, the SEC shall approve the change or institute proceedings to consider the change. The Commission may extend the time period if it or the SRO feels it is necessary or appropriate. The Commission must give the SRO an opportunity for a hearing within 180 days of their filing publication date for the proposed change. If there is no such hearing, the Commission shall either approve or disapprove the rule within 180 days of the rule filing publication date. The Commission can extend this deadline by no more than 60 days. The section stipulates that if the SEC does not act within the guidelines then the SRO rule shall be deemed to have been approved by the Commission.

Section 916. Study Regarding Financial Literacy Among Investors

Section 916 directs the SEC to study and issue a report on the existing level of financial literacy among investors that purchase shares of open-end companies and other related issues.

Section 917. Study Regarding Mutual Fund Advertising

Section 917 directs the GAO to conduct a study and issue a report on mutual fund advertising to examine: (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 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.

Section 918. Clarification of Commission Authority to Require Investor Disclosures Before Purchase of Investment Products and Services

Section 918 gives the SEC the authority to require broker-dealers to provide to clients certain documents or information before the purchase of an investment product or service.

Subtitle B – Increasing Regulatory Enforcement and Remedies

Section 921. Authority to Issue Rules to Restrict Mandatory Predispute Arbitration

Section 921 directs the SEC to conduct a rulemaking to reaffirm, prohibit, or impose conditions on the use of agreements that require customers of any broker-dealer to arbitrate any dispute under the securities laws or regulations. The SEC must find that these measures are in the public interest and for the protection of investors.

Section 922. Whistleblower Protection

Section 922 establishes a robust whistleblower program within SEC to reward whistleblowers who provide information leading to civil enforcement or criminal prosecution that lead to sanctions of $1,000,000 or more in securities fraud cases. The whistleblower will be rewarded out of an Investor Protection Fund. The legislation also provides for other protections for whistleblowers against employers, such as prohibition of demotion, harassment and discharging.

Section 923. Conforming Amendments for Whistleblower Protection

Section-by-Section Summary

Section 924. Implementation and Transition Provisions for Whistleblower Protection

Section 924 directs the SEC to issue final regulations implementing the whistleblower provisions of this subtitle.

Section 925. Collateral Bars

Section 925 gives the Commission the authority to bar individuals from the gamut of registered securities entities – brokerage, municipal advisory services, transfer agency, investment advisory services, and credit rating – for transgressions in any one of the securities industries.

Section 926. Authority of State Regulators Over Regulation D Offerings

Section 926 authorizes the SEC to designate a class of securities that are not covered securities under Section 18 of the Securities Act of 1933 because they are not of sufficient size or scope.

Section 927. Equal Treatment of Self-Regulatory Organization Rules

Section 927 gives SROs equal treatment under Chapter 2B of Title 15 of the U.S. Code (Securities Exchanges) by providing that any contracts binding a person to waive SRO rules shall be void.

Section 928. Clarification That Section 205 of the Investment Advisers Act of 1940 Does Not Apply to State-Registered Advisers

Section 928 makes technical corrections to Chapter 2D of Title 15 of the U.S. Code to clarify that Section 205 of the Investment Advisers Act of 1940 does not apply to state-registered advisers.

Section 929. Unlawful Margin Lending

Under previous law, it was unlawful for any member of a national securities exchange or any broker or dealer to provide margin lending to or for any customer on any non-exempt security unless the loan met margin regulations provided for in Chapter 2B of Title 15 of the U.S. Code and was properly collateralized. Section 929 provides that either of these two infractions is unlawful by itself.

Section 929A. Protection for Employees of Subsidiaries and Affiliates of Publicly traded Companies

Section 929A provides that employees of subsidiaries or affiliates of public companies are afforded the same whistleblower protections provided for in Section 806(a) of the Sarbanes-Oxley Act of 2002 as direct employees of public companies.

Subtitle C – Improvements to the Regulation of Credit Rating Agencies

Section 931. Findings

Section 931 enumerates findings for which the Congress believes it is necessary to enact changes to the regulation and oversight of credit rating agencies.

Section 932. Enhanced Regulation, Accountability, and Transparency of Nationally Recognized Statistical Rating Organizations

Section-by-Section Summary

Section 932:

(1) Provides that each NRSRO shall establish, maintain, enforce, and document an effective internal control structure governing adherence to policies, procedures, and methodologies for determining credit ratings. NRSRO CEOs must make an annual attestation as to the effectiveness of the internal controls.

(2) Authorizes the SEC to fine NRSROs and to revoke a credit rating agency's NRSRO status for a particular class of securities when an NSRSO lacks financial and managerial resources to consistently produce accurate ratings.

(3) Requires the SEC to issue rules to prevent sales and marketing considerations from influencing the production of NRSRO ratings. Such rules shall provide exceptions for small NRSROs, and any violation of such rules that affects a rating is grounds for revocation or suspension of NRSRO registration.

(4) Provides that an NRSRO compliance officer may not perform credit ratings, take part in sales or marketing, develop ratings methodologies, or set compensation levels for NRSRO employees. An annual compliance report must be submitted to the SEC.

(5) Establishes an Office of Credit Ratings within the SEC to administer SEC rules; conduct annual exams; and monitor internal supervisory controls, the management of conflicts of interest, post-employment "revolving door" policies, and other matters.

(6) Provides that the SEC shall, by rule, require each NRSRO to disclose information on initial credit ratings and subsequent changes to those ratings, in a format that allows users of ratings to compare the performance of ratings across NRSROs.

(7) Directs the SEC to prescribe rules to ensure that ratings are produced in accordance with procedures and methodologies that have been approved by the NRSRO board or the senior credit officer. The rules shall also require that material changes to a rating procedure or methodology be applied in a consistent manner to all ratings where the changes apply, and be applied to existing ratings within a reasonable period of time. Users of credit ratings must be notified when a material change is made—or a material error is identified—in a rating procedure or methodology.

(8) Directs the SEC to prescribe rules to require NRSROs to publish with each rating a form (in paper or electronic format) disclosing information about (1) the assumptions behind the rating, (2) the data relied upon, (3) whether servicer or remittance reports are used to monitor the rating, and (4) other information to allow investors and users of credit ratings to better understand the rating. The form must discuss (1) the main assumptions underlying the rating, (2) potential limitations of the rating, (3) information on the uncertainty of ratings, (4) whether third-party due diligence reports have been used, (5) data about the issuer used in determining the rating, (6) the NRSRO's assessment of the quality of data available and considered, (7) information related to conflicts of interest, and (8) other information that the SEC may require.

(9) Provides that issuers or underwriters of asset-backed securities must make public the findings and conclusions of any due diligence report obtained by the issuer or underwriter. Third-party due diligence services must certify (in a form and content to be established by the SEC) that they have conducted a thorough review of data, documentation, and other relevant information necessary for the NRSRO to provide an accurate rating. NRSROs shall make such certifications public, in order to allow the public to determine the adequacy of third-party due diligence services.

Section-by-Section Summary

Section 933. State of Mind in Private Actions

Section 933 provides that credit ratings shall not be deemed forward looking statements for the purposes of section 21E of the Securities Exchange Act of 1934. In cases against NRSROs, it is sufficient to prove with a strong inference that the NRSRO knowingly or recklessly failed to conduct a reasonable investigation of the factual elements of the rated security, or failed to obtain reasonable verification of such factual elements from independent sources that it considered to be competent.

Section 934. Referring Tips to Law Enforcement or Regulatory Authorities

Section 934 provides that each NRSRO shall refer to law enforcement or regulatory authorities credible information that the NRSRO receives that alleges that an issuer of securities rated by the NRSRO has committed a material violation of law. The NRSRO is not required to verify the accuracy of such information.

Section 935. Consideration of Information from Sources Other Than the Issuer in Rating Decisions

Section 935 provides that in producing a credit rating, an NRSRO shall consider information from a source other than an issuer that the NRSRO finds credible and potentially significant to a rating decision.

Section 936. Qualification Standards for Credit Rating Analysts

Section 936 directs the SEC to issue rules to ensure that any person employed by an NRSRO to perform credit ratings meets standards of training, experience, and competence necessary to produce accurate ratings, and is tested for knowledge of the credit rating process.

Section 937. Timing of Regulations

Section 937 directs the SEC to issue final regulations required by this subtitle not later than 1 year after the date of enactment of the Act.

Section 938. Universal Ratings Symbols

Section 938 requires NRSROs to clearly define any symbols used to denote a credit rating, and apply any such symbols in a consistent manner to all types of securities and money market instruments to which they are applied. Nothing in this Section prohibits an NRSRO from using distinct sets of symbols to denote credit ratings for different types of securities.

Section 939. Government Accountability Office Study and Federal Agency Review of Required Uses of Nationally Recognized Statistical Rating Organization Ratings

Section 939 directs the GAO to study the scope of Federal and State laws and regulations with respect to the regulation of securities markets, banking, insurance, and other areas that require the use of ratings issued by NRSROs. Consulting with a range of regulators and market participants, GAO shall evaluate the necessity of such rating requirements and the potential impact on markets and investors of removing them. Not later than 2 years after the date of enactment of this Act, the GAO shall report to Congress with recommendations on which ratings requirements, if any, could be removed with minimal disruption to the markets and whether the financial markets and investors would benefit from the rescission of the ratings requirements identified by the study.

Section-by-Section Summary

Within one year of the completion of GAO's report, the SEC and other financial regulators shall review rating requirements in their regulations, and shall remove such rating requirements, unless they determine that there is no reasonable alternative standard of creditworthiness to replace a credit rating, and that removing the rating requirement would be inconsistent with the purposes of the statute that authorized the regulation and not in the public interest.

Section 939A. Securities and Exchange Commission Study on Strengthening Credit Rating Agency Independence

Section 939A directs the SEC to conduct a study of the independence of NRSROs, evaluate the management of conflicts of interest by NRSROs, and evaluate the potential impact of rules prohibiting an NRSRO that provided a rating to an issuer from providing other services to the issuer.

Section 939B. Government Accountability Office Study on Alternative Business Models

Section 939B directs the GAO to conduct a study on alternative means of compensating NRSROs in order to create incentives for NRSROs to provide more accurate ratings and any statutory changes that would be required to facilitate these changes. The GAO will submit this report, with recommendations, within one year of passage of the Act.

Section939C. Government Accountability Office Study on the Creation of an Independent Professional Analysts Organization

Section 939C directs the GAO to conduct a study on the feasibility and merits of creating an independent professional organization for NRSRO rating analysts that would establish independent standards for governing the rating analyst profession, establishing a code of ethical conduct, and overseeing the rating analyst profession. The GAO shall submit a report to the relevant congressional committees within one year of passage of the Act.

Subtitle D – Improvements to the Asset-Backed Securitization Process

Section 941. Regulation of Credit Risk Retention (Skin in the Game)

Section 941 directs the Federal banking agencies and the SEC to 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. The amount of risk retained will be at least 5%, unless the securitized assets meet standards of low credit risk. Separate rulemaking will address distinct asset classes, such as home mortgages, commercial mortgages, commercial loans, and auto loans. Such regulations shall (1) specify permissible forms of risk retention, (2) provide exemptions as may be appropriate in the public interest or for the protection of investors, and (3) provide for the allocation of risk retention requirements between securitizers and originators of assets sold to securitizers. In determining the allocation of risk retention requirements, regulators shall consider (1) whether the assets sold to securitizers have terms and characteristics that reflect reduced credit risk, (2) whether secondary market activity creates incentives for imprudent lending, and (3) the impact of risk retention requirements on access to credit by consumers and business.

The Federal banking agencies and the SEC may jointly adopt or issue exemptions to the rules issued under this section, including exemptions for classes of institutions or assets relating to the risk

retention requirement and the prohibition on hedging under this section, provided that any exemption shall help ensure high quality underwriting standards and 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.

The risk retention rules will take effect one year after final publication for securitizations of home mortgages, and one year later for all other asset-backed securities.

Section 942. Disclosures and Reporting for Asset-Backed Securities

Section 942 directs the SEC to adopt regulations requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security, including (1) asset-level or loan-level data necessary for investors to independently perform due diligence, (2) data having unique identifiers relating to loan brokers or originators; (3) the compensation of the broker or originator; and (4) the amount of risk retained by the originator and the securitizer. The format of the disclosures shall facilitate comparison of such data across securities in similar types of asset classes.

Section 943. Representations and Warranties in Asset-Backed Offerings

Section 943 directs the SEC to prescribe regulations on the use of representations and warranties in the market for asset-backed securities that require each NRSRO to include in any report accompanying a credit rating a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities. The SEC shall also prescribe rules to require any originator to disclose fulfilled repurchase requests across all trusts aggregated by the originator, in order that investors may identify asset originators with clear underwriting deficiencies.

Section 944. Exempted Transactions Under the Securities Act of 1933

Section 944 removes the exemption from registration under the Securities Act of 1933 for transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure.

Section 945. Due Diligence Analysis and Disclosure in Asset-Backed Securities Issues

Section 945 directs the SEC to issue rules that require an issuer of an asset-backed security to perform a due diligence analysis of the assets underlying the security, and to disclose the nature of the analysis.

Subtitle E – Accountability and Executive Compensation

Section 951. Shareholder Vote on Executive Compensation Disclosures

Section 951 provides that any proxy or consent or authorization for an annual or other meeting of the shareholders 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.

Section-by-Section Summary

Section 952. Compensation Committee Independence

Section 952 directs the SEC to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with independent compensation committee standards. In determining whether a Director is independent, the national securities exchanges should consider the source of compensation of a member of the board of directors of an issuer, including any consulting, advisory, or other compensatory fee paid by the issuer to such member of the board of directors; and 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. Any compensation counsel or adviser shall be independent.

The issuer's proxy or consent materials must disclose whether the compensation committee has used the advice of a compensation consultant and whether the committee has raised any conflict of interest.

The Section also directs the SEC to conduct a study of the use of compensation consultants and their impact.

Section 953. Executive Compensation Disclosures

Section 953 directs the SEC to require each issuer to disclose in the annual proxy statement of the issuer a clear description of any compensation required to be disclosed under the SEC executive compensation forms. This disclosure should include information that shows the relationship between executive compensation and the financial performance of the issuer and could include a graphic or pictorial comparison of the amount of executive compensation and the financial performance of the issuer or return to investors.

Section 954. Recovery of Erroneously Awarded Compensation

Section 954 directs the SEC to direct the national securities exchanges and national securities associations to prohibit the listing of issuers who do not 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, the issuer will recover from any current or former executive officer of the issuer any compensation in excess of what would have been paid to the executive officer had correct accounting procedures been followed.

Section 955. Disclosure Regarding Employee and Director Hedging

Section 955 directs the SEC to require each issuer to disclose in the annual proxy statement whether the employees or members of the board of the issuer are permitted to purchase financial instruments 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.

Section 956. Excessive Compensation by Holding Companies of Depository Institutions

Section 956 amends Section 5 of the Bank Holding Company Act of 1956 to establish standards prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company that provides an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits; or could lead to material financial loss to the bank holding company.

Section-by-Section Summary

Subtitle F – Improvements to the Management of the Securities and Exchange Commission

Section 961. Report and Certification of Internal Supervisory Controls

Section 961 directs the SEC to submit a report certified by the Division Directors to the House Financial Services and Senate Banking Committees on the Commission's examinations of registered entities, enforcement investigations, and review of corporate financial securities filings. Each report should contain an assessment of the Commission's internal supervisory controls and examination staff procedures; a certification of adequate supervisory controls; and an attestation by the U.S. Comptroller General to the adequacy and effectiveness of the internal supervisory control structure and procedures.

Section 962. Triennial Report on Personnel Management

Section 962 directs the GAO to submit a triennial report with recommendations 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 effectiveness of supervision; promotion criteria; competence of professional staff; communication between units of the Commission; staff turnover; managerial structure; and the actions taken by the Commission regarding employees who have failed to perform their duties. This Section directs the GAO to evaluate improvements of and make recommendations for personnel management. Within 90 days of the GAO's report, the SEC will submit a report describing what actions it has taken in response to the GAO report.

Section 963. Annual Financial Controls Audit

Section 963 directs the SEC to submit an annual report to Congress that describes the responsibility of the management for establishing and maintaining an adequate internal control structure and procedures for financial reporting, and contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year. The Section also directs the GAO to submit a report that assesses the effectiveness of the SEC's internal financial controls and to attest to the SEC's assessments of their controls. Both of these reports are due within six months of the end of each fiscal year.

Section 964. Report on Oversight of National Securities Associations

Section 964 directs the GAO to submit a triennial report to Congress on the SEC's oversight of the National Securities Associations. The report will include an evaluation of the governance of such national securities associations, including the identification and management of conflicts of interest; performance of examinations; the oversight of executive compensation practices; arbitration services; the review of advertising; and related issues.

Section 965. Compliance Examiners

Section 965 provides that the SEC Division of Trading and Markets and Division of Investment Management shall have a staff of examiners to perform compliance inspections and examinations of entities under their jurisdictions.

Section 966. Suggestion Program for Employees of the Commission

Section 966 directs the SEC Inspector General to establish a hotline program for SEC employees to submit suggested improvements in the efficiency, effectiveness, and productivity of Commission resources and allegations of waste, fraud, misconduct, and mismanagement. The Inspector General shall

Section-by-Section Summary

submit an annual report to Congress describing the nature and potential benefits of the suggestions, the nature and seriousness of the allegations, and the actions that the Commission has taken regarding the recommendations of the Inspector General.

Subtitle G – Strengthening Corporate Governance

Section 971. Election of Directors by Majority Vote in Uncontested Elections

Section 971 directs the SEC to write rules to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that has a member or members on its board that did not receive a majority vote in an uncontested board election. The Section gives SEC exemptive authority based on issuers' size, market capitalization, number of shareholders, or other criteria the Commission deems appropriate. This Section provides issuers' boards the ability to override these provisions with a unanimous vote and a publication of the reasons it did not accept the resignation and why the decision is in the best interest of the issuer and its shareholders.

Section 972. Proxy Access

Section 972 gives the SEC the authority to write rules that require issuers to allow shareholders to put nominees on the company proxy.

Section 973. Disclosures Regarding Chairman and CEO Structures

Section 973 directs the SEC to write rules to require an issuer to disclose in the annual proxy statement the reason that the issuer has chosen either the same person to serve as chairman of the board of directors and chief executive officer or different individuals to serve in these roles.

Subtitle H – Municipal Securities

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

Section 975 provides for the regulation of municipal advisors under the Securities Exchange Act of 1934. The Section also changes the composition of the MSRB to include 8 public representatives and 7 broker-dealer, bank, and advisor representatives. The Section provides that the MSRB can establish information systems, collect fees to establish those systems, and provide the SEC with assistance for the examination and enforcement of municipal financial entities.

Section 976. Government Accountability Office Study of Increased Disclosure to Investors

Section 976 directs the GAO to conduct a study and review of the disclosure required to be made by issuers of municipal securities and to issue a report on the findings. The GAO will describe the size of the municipal securities markets and the issuers and investors; 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; 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 make recommendations relating to the advisability of the repeal of the Tower Amendment.

Section 977. Government Accountability Office Study on the Municipal Securities Markets

Section-by-Section Summary

Section 977 directs the GAO to conduct a study and issue a report on the municipal securities markets, including an analysis of the mechanisms for trading, quality of trade executions, market transparency, trade reporting, price discovery, settlement clearing, and credit enhancements; the needs of the markets and investors and the impact of recent innovations; recommendations for how to improve the transparency, efficiency, fairness, and liquidity of trading in the municipal securities market; and potential uses of derivatives in the municipal markets.

Section 978. Study of Funding for Government Accounting Standards Board

Section 978 directs the SEC to conduct a study that evaluates the role and importance of the Government Accounting Standards Board in the municipal securities markets; 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; and other related matters.

Section 979. Commission Office of Municipal Securities

Section 979 establishes the Office of Municipal Securities within the SEC to administer the rules of the Commission with respect to the practices of municipal securities brokers and dealers, municipal securities advisors, municipal securities investors, and municipal securities issuers; and to coordinate with the Municipal Securities Rulemaking Board for rulemaking and enforcement actions as required by law. The Director of the Office will report to the SEC Chairman.

Subtitle I – Public Company Accounting Oversight Board, Portfolio Margining, and Other Matters

Section 981. Authority to Share Certain Information with Foreign Authorities

Section 981 provides that PCAOB may share information relating to a public company overseen by a foreign auditor oversight authority under certain circumstances.

Section 982. Oversight of Brokers and Dealers

Section 982 provides the PCAOB with oversight authority over broker-dealers accounts, including the authority to inspect and examine. Under this Section, auditors of broker-dealers would have to register with the PCAOB. Broker-dealers will be assessed fees to assist in the funding of the PCAOB.

Section 983. Portfolio Margining

Section 983 adds portfolio margining considerations to SIPA so that customers who hold margin accounts with a broker-dealer are protected from the broker-dealer's insolvency.

Section 984. Loan or Borrowing of Securities

Section 984 provides that it is unlawful for any person to effect, accept, or facilitate a transaction involving the loan or borrowing of securities in contravention of such rules as the Commission may prescribe. The Section also directs the SEC to promulgate rules designed to increase the transparency of information available with respect to loaned or borrowed securities.

Section 985. Technical Corrections to Federal Securities Laws

Section-by-Section Summary

Section 986. Conforming Amendments Relating to the Repeal of the Public Utility Holding Company Act of 1935

Section 987. Amendment to Definition of Material Loss and Nonmaterial Losses to the Deposit Insurance Fund for Purposes of Inspector General Reviews

Section 987 raises the "material loss" threshold that triggers a review of a failed federally regulated bank by Inspector Generals of the regulator from the current $25,000,000 to $100,000,000 for the period between September 30, 2009 and December 31, 2010, then lowers it to $75,000,000 for the period between January 1, 2011 and December 31, 2011, and rests it at $50,000,000 for the period after January 1, 2012.

Section 988. Amendment to Definition of Material Loss and Nonmaterial Losses to the National Credit Union Share Insurance Fund for Purposes of Inspector General Reviews

Section 988 raises the "material loss" threshold that triggers a review of a failed credit union by the Inspector General of the National Credit Union Administration Board from $10,000,000 to $25,000,000.

Section 989. Government Accountability Office Study on Proprietary Trading

Section 989 directs the GAO to conduct a study on proprietary trading by financial institutions and the implication of this practice on systemic risk. This will include an evaluation of whether proprietary trading presents a material systemic risk to the stability of the United States financial system; whether proprietary trading presents material risks to the safety and soundness of the covered entities that engage in such activities; whether proprietary trading presents 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; 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 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. The GAO will submit a report to Congress on the results of this study within 15 months of passage of the Act.

Section 989A. Senior Investor Protection

Section 989A defines the terms "misleading designation", "financial product", misleading or fraudulent marketing" and "senior" for the purposes of protecting senior citizens from investment frauds. The Section directs the Office of Financial Literacy within Bureau of Consumer Financial Protection to establish a program to provide grants of up to $500,000 per fiscal year to States to investigate and prosecute misleading and fraudulent marketing practices or to develop educational materials and training to reduce misleading and fraudulent marketing of financial products toward seniors. States may use the grants for staff, technology, equipment, training and educational materials. To receive these grants, states must adopt rules on the appropriate use of designations in the offer or sale of securities or investment advice; on suitability requirements in the sale of securities; on the use of designations in the sale of insurance products; and on insurer conduct related to the sale of annuity products. This Section authorizes $8 million to be appropriated for these purposes for fiscal years 2010 through 2014.

Section-by-Section Summary

Section 989B. Changes in Appointment of Certain Inspectors General

Section 989B provides for presidential appointment for the Inspectors General of the Federal Reserve Board of Governors, the CFTC, the NCUA, the PBGC, the SEC, and the Bureau of Consumer Financial Protection with Senate approval.

Subtitle J – Self-funding of the Securities and Exchange Commission

Section 991. Securities and Exchange Commission Self-Funding

Section 991provides for the SEC to become a self-funded organization. Each year the SEC will submit a budget request to Congress and the Treasury. The Treasury will deposit this money into an account for use by the SEC. The SEC will set its fees and assessments at a level meant to fully repay Treasury. If the SEC does not recoup sufficient funds, then the SEC is not obligated to fully repay Treasury. Any collections in excess of 25% of the next year's budget request must be paid to Treasury.

Section-by-Section Summary

Title X—Bureau of Consumer Financial Protection

Section 1001. Short title

Establishes the name of the title to be the "Consumer Financial Protection Act of 2010."

Section 1002. Definitions

Subtitle A –Bureau of Consumer Financial Protection.

Section 1011. Establishment of the Bureau

Establishes the Bureau of Consumer Financial Protection (the Bureau) in the Federal Reserve System and Bureau authorities to regulate the offering and provision of consumer financial products and services. Establishes in the Bureau the positions of the Director and Deputy Director. The Director is appointed for a 5-year term and subject to removal for cause.

Section 1012. Executive and administrative powers

Authorizes the Bureau to establish general policies with respect to all executive and administrative functions. Provides that the Director may delegate to any authorized employee, representative, or agent any power vested in the Bureau. Authorizesthe Bureau to write rules without interference from the Board of Governors, other Federal agencies, and executive offices.

Section 1013. Administration

Authorizes the Director to appoint and employ officials and professional staff, and to establish in the Bureau functional units for research, community affairs, and consumer complaints. Establishes within the Bureau an Office of Fair Lending and Equal Opportunity and an Office of Financial Literacy.

Section 1014. Consumer Advisory Board

Requires the Director to create a Consumer Advisory Board to consult with on matters pertaining to the Bureau's functions and authorities. Provides for the appointment of 6 members to the Consumer Advisory Board by the Federal Reserve Bank Presidents.

Section 1015. Coordination

Requires the Bureau to coordinate with the SEC and CFTC and Federal agencies and State regulators to promote consistent regulatory treatment of consumer financial and investment products and services.

Section 1016. Appearances before reports to Congress

Requires the Director to appear before Congress at semi-annual hearings and, concurrently, to prepare and submit a report to the President and Congress concerning the Bureau's budget and regulation, supervision, and enforcement activities.

Section 1017. Funding; penalties and fines

Requires the Federal Reserve Board of Governors to transfer a certain amount of funds to the Bureau on a regular basis with specified limits. Establishes within the Federal Reserve Board a special

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fund for receipts which can be invested under certain guidelines and pays for Bureau expenses. Establishes a victims' relief fund for civil penalties obtained by the Bureau.

Section 1018. Effective date

Provides that this subtitle shall become effective on the date of enactment of this Act.

Subtitle B – General Powers of the Bureau.

Section 1021. Purpose, objectives, and functions.

Mandates the Bureau to enforce Federal consumer financial laws. Establishes the Bureau's functions with regard to regulation, supervision and enforcement.

Section 1022. Rulemaking authorities

Authorizes the Bureau to administer, enforce and implement the provisions of Federal consumer financial laws through prescribing rules and issuing orders and guidance. Requires consultation with prudential regulators in developing regulations. Grants the Bureau information collection authority. Requires the Bureau to assess the efficacy of its rules.

Section 1023. Review of bureau regulations

Provides for a process by which the Systemic Risk Council could set aside a final regulation promulgated by the Bureau if, in the view of two-thirds of the Council, the regulation would put the safety and soundness of the banking system or the stability of the financial system at risk. Any such decision would have be done within certain specified time limits.

Section 1024. Supervision of nondepository covered persons

Grants the Bureau authority to conduct primary enforcement and supervision over large nondepository institutions, all mortgage lenders, brokers, servicers and others, and service providers taking into account a number of factors, including risk to consumers. Requires supervision and enforcement be implemented in coordination with the prudential and state bank regulators and in consultation with the Federal Trade Commission, particularly in filing civil action.

Section 1025. Supervision of very large banks, savings associations, and credit unions.

Grants the Bureau examination and enforcement authority over insured depository institutions and credit unions with more than $10 billion in assets and their service providers. Requires examination and enforcement action to be coordinated with prudential and state bank regulators. Any conflicts between regulators may be resolved by a governing panel.

Section 1026. Other banks, savings associations, and credit unions

Grants the Bureau authority to require reports from insured depository institutions and credit unions with $10 billion in assets or less and certain service providers. Grants the Bureau authority to include examiners on a sampling basis of examinations performed by the prudential regulator of these institutions.

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Section 1027. Limitations on authorities of the Bureau; preservation of authorities

Clarifies that merchants, retailers, and other businesses that do not sell consumer financial products or services are not subject to the rules, supervision, or enforcement authority of the Bureau. Further clarifies that such merchant, retailer, or other business may directly finance a consumer's purchase of its products, within certain defined limits, without being subject to the Bureau's authority so long as the business in not significantly engaged in providing consumer financial products or services.

Section 1028. Authority to study and report on mandatory pre-dispute arbitration

Requires the Bureau to conduct a study and provide a report to Congress on the use of pre-dispute arbitration agreements as they pertain to the offering or provision of consumer financial products or services. Grants the Bureau authority to prohibit or impose conditions and limitations on certain agreements if it is in the public interest. Prohibits the Bureau from restricting consumers from entering into voluntary arbitration agreements after a dispute has arisen.

Section 1029. Effective date.

Provides that this subtitle become effective on the designated transfer date.

Subtitle C – Specific Bureau Authorities

Section 1031. Prohibiting unfair, deceptive, or abusive acts or practices

Authorizes the Bureau to prevent a covered person from engaging in or committing an unfair, deceptive or abusive act or practice. Requires the Bureau to prescribe rules to indentify such acts or practices.

Section 1032. Disclosures

Grants the Bureau authority to ensure that information relevant to the purchase of consumer financial products or services is effectively disclosed to the consumer. Grants the Bureau authority to provide a model form of such disclosure standards. Establishes a procedure for trial disclosure programs. Requires the Bureau to combine Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) disclosures.

Section 1033. Consumer rights to access information

Ensures that consumers have adequate rights to access information concerning their purchase and possession of a consumer financial product or service.

Section 1034. Prohibited acts

Prohibits by law certain activities such as the selling or advertising of consumer financial products or services which are not in conformity with the sections of this title.

Subtitle D – Preservation of State Law

Section 1041. Relation to state law

Confirms that this title, and any rule adopted by the Bureau, will not preempt State law if such as State law provides greater protection for consumers.

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Section 1042. Preservation of enforcement powers of states

Grants authority to State attorneys general to bring civil actions for violations of provisions of this title. State attorneys general and regulators must provide the Bureau with prior notice where practicable. It also confirms that this title has no impact on the authority of State securities or State insurance regulators regarding their enforcement actions or rulemaking activities.

Section 1043. Preservation of existing contracts

Ensures that this title will not alter or affect the applicability of rules by the Comptroller of the Currency or the Office of the Thrift Supervision to contracts entered into prior to the date of enactment of this title.

Section 1044. State law preemption standards for national banks and subsidiaries clarified.

Amends the National Bank Act to establish the State law preemption standards for national banks and their subsidiaries, including prohibiting discrimination against national banks. In accordance with the legal standard in Barnett Bank v. Nelson, 517 U.S. 25 (1996), State consumer financial laws that prevent or significantly interfere with a national bank's exercise of its powers would also be preempted.

Section 1045. Clarification of law applicable to nondepository institutions subsidiaries

Clarifies that State law applies to State-chartered nondepository institution subsidiaries and affiliates of national banks.

Section 1046. State law preemption standards for federal savings associations and subsidiaries clarified

Amends the Home Owners' Loan Act to clarify State law preemption standards for Federal savings associations and their subsidiaries.

Section 1047. Visitorial standards for national banks and savings associations

Establishes visitorial powers of State attorneys general under the National Bank Act and the Home Owners' Loan Act.

Section 1048. Effective date

Provides that this subtitle becomes effective on the designated transfer date.

Subtitle E – Enforcement Powers

Section 1051. Definitions

Section 1052. Investigations and administrative discovery

Authorizes the Bureau to issue subpoenas for documents and testimony. Authorizes demands of materials. Provides for confidential treatment of demanded material and for the Bureau to petition a Federal District Court for enforcement. Provides for petition to modify or set aside a demand, and for custodial control and district court jurisdiction.

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Section 1053. Hearings and adjudication proceedings

Authorizes the Bureau to conduct hearings and adjudication proceedings with special rules for cease-and-desist proceedings, temporary cease-and-desist proceedings, and for enforcement of orders in the United States District Court.

Section 1054. Litigation authority

Authorizes that the Bureau commence civil action against a person who violates a provision of this title or any enumerated consumer law, rule or order.

Section 1055. Relief available

Provides for relief for consumers through administrative proceedings and court actions for violations of this title, including civil money penalties.

Section 1056. Referrals for criminal proceedings

Authorizes the Bureau to transmit evidence of conduct that may constitute a violation of Federal criminal law to the Attorney General of the United States.

Section 1057. Employee protection

Provides protection against firings of or discrimination against employees who provide information or testimony to the Bureau regarding violations of this title.

Section 1058. Effective date

Provides that this subtitle becomes effective on the designated transfer date.

Subtitle F – Transfer of Functions and Personnel and Transitional Provisions

Section 1061. Transfer of consumer financial protection functions

Transfers functions relating to consumer financial protection from the Federal banking agencies (Federal Reserve, OCC, OTS and FDIC) and NCUA, the Department of Housing and Urban Development and the Federal Trade Commission to the Bureau subject to backup enforcement authority.

Section 1062. Designated transfer date

Identifies the date of transfer of functions to the Bureau as between 6 and 18 months after the date of enactment of this title and subject to a six month extension. Requires that the transfer of functions be completed not later than 2 years after the date of enactment of this title.

Section 1063. Savings provision

Clarifies that existing rights, duties, obligations, orders, and rules of the Federal banking agencies, the NCUA , the Department of Housing and Urban Development and the Federal Trade Commission are not affected by the transfer.

Section 1064. Transfer of certain personnel

Provides for the transfer of personnel from various agencies to the Bureau and establishes employment and pay protection for two years. Provides for continuation of benefits.

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Section 1065. Incidental transfers

Authorizes the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, to make additional incidental transfers of assets and liabilities of the various agencies. This provision sunsets after 5 years.

Section 1066. Interim authority of the Secretary

Provides the Secretary of the Treasury authority to perform the functions of the Bureau under this Title until the Director of the Bureau is confirmed by the Senate. Grants such sums be appropriated as necessary to carry out this section.

Section 1067 Transition oversight.

Ensures an orderly and organized startup of the Bureau. Requires the Bureau to submit an annual report to Congress including plans for the recruitment of a qualified workforce and a training and development program.

Subtitle G – Regulatory Improvements

Section 1071. Collection of deposit account data

Authorizes the collection of deposit account data in order to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business development needs and opportunities.

Section 1072. Small business data collection

Authorizes the Bureau to collect data on small businesses to facilitate enforcement of fair lending laws and to enable communities, governmental entities and creditors to identify business and community development needs and opportunities of women-owned and minority-owned small businesses.

Section 1073. GAO Study on the effectiveness and impact of various appraisal methods

Requires the GAO to conduct a study on various appraisal methods and how the usage of such methods impact costs to consumers, conflicts of interest and home price speculation.

Section 1074. Prohibition on certain prepayment penalties

Prohibits prepayment penalties on certain residential mortgage loans. Prevents creditors from offering consumers residential mortgage loan products containing prepayment penalties unless they also offer products without prepayment penalties.

Subtitle H – Conforming Amendments

Section 1081. Amendments to the Inspector General Act of 1978

Makes conforming amendments.

Section 1082. Amendments to the Privacy Act of 1974

Makes conforming amendments.

Section 1083. Amendments to the Alternative Mortgage Transaction Parity Act of 1982

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Makes conforming amendments.

Section 1084. Amendments to the Electronic Fund Transfer Act
Makes conforming amendments.

Section 1085. Amendments to the Equal Credit Opportunity Act
Makes conforming amendments.

Section 1086. Amendments to the Expedited Funds Availability Act
Makes conforming amendments.

Section 1087. Amendments to the Fair Credit Billing Act
Makes conforming amendments.

Section 1088. Amendments to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act
Makes conforming amendments.

Section 1089. Amendments to the Fair Debt Collection Practices Act
Makes conforming amendments.

Section 1090. Amendments to the Federal Deposit Insurance Act
Makes conforming amendments.

Section 1091. Amendments to the Gramm-Leach-Bliley Act
Makes conforming amendments.

Section 1092. Amendments to the Home Mortgage Disclosure Act
Makes conforming and further amendments. The amendments require new data fields to be reported to the Bureau, including borrower age, total points and fees information, loan pricing, prepayment penalty information, house value for loan to value ratios, period of introductory interest rate, interest-only or negative amortization information, terms of the loan, channel of origination, unique originator ID from the Secure and Fair Enforcement for Mortgage Licensing Act, universal loan identifier, parcel number to permit geocoding, and credit score.

Section 1093. Amendments to the Home Owners Protection Act of 1998
Makes conforming amendments.

Section 1094. Amendments to the Home Ownership and Equity Protection Act of 1994
Makes conforming amendments.

Section 1095. Amendments to the Omnibus Appropriations Act, 2009
Makes conforming amendments.

Section 1096. Amendments to the Real Estate Settlement Procedures Act
Makes conforming amendments.

Section 1097. Amendments to the Right to Financial Privacy Act of 1978

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Makes conforming amendments.

Section 1098. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008

Makes conforming amendments.

Section 1099. Amendments to the Truth in Lending Act

Makes conforming amendments.

Section 1100. Amendments to the Truth and Savings Act

Makes conforming amendments.

Section 1101. Amendments to the Telemarketing and Consumer Fraud and Abuse Prevention Act

Makes conforming amendments.

Section 1102. Amendments to the Paperwork Reduction Act

Makes conforming amendments.

Section 1103. Effective Date

Provides that sections 1083 through 1102 become effective on the designated transfer date.

Section-by-Section Summary

Title XI – Federal Reserve System Provisions

Section 1151. Federal Reserve Act Amendment on Emergency Lending Authority

This section amends Section 13(3) of the Federal Reserve Act which governs emergency lending. Emergency lending to an individual entity is no longer permitted. The Board of Governors now is authorized to lend to a "financial market utility that the Financial Stability Oversight Council determines is, or is likely to become, systemically important, or any program or facility with broad-based eligibility." Policies and procedures governing emergency lending must be established by regulation, in consultation with the Secretary of the Treasury. Lending programs must be designed to provide liquidity and not to aid a failing financial company. Collateral for loans must be of sufficient quality to protect taxpayers from losses.

The Board of Governors must report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services on 13(3) lending within 7 days after it is initiated, and periodically thereafter. The identities of recipients of emergency lending will be disclosed within 1 year of receipt of assistance, unless the Federal Reserve reports to Congress that disclosure would reduce the effectiveness of the program or facility. The Comptroller General will report to Congress evaluating whether a determination not to disclose recipient identities within a year is reasonable.

Section 1152. Reviews of Special Federal Reserve Credit Facilities

This section amends Section 714 of Title 31, United States Code, to establish Comptroller General audits of emergency lending by the Board of Governors of the Federal Reserve under Section 13(3) of the Federal Reserve Act.

Section 1153. Public Access to Information

This section amends Section 2B of the Federal Reserve Act. The Comptroller General audits of 13(3) lending established under Section 1152 of this Act, the annual financial statements prepared by an independent auditor for the Board of Governors, and reports to the Senate Committee on Banking, Housing and Urban Affairs on 13(3) lending established under Section 1151 of this Act will be displayed on a webpage that will be accessed by an "Audit" link on the Board of Governors website. The required information will be made available within 6 months of the date of release.

Sections 1154-1155. Emergency Financial Stabilization Debt Guarantees

The FDIC will be able to guarantee the debt of solvent insured depositories and their holding companies under very strict conditions. The Board of Governors of the Federal Reserve and the Financial Stability Oversight Council must determine that there is a "liquidity event" that threatens financial stability, in writing and subject to GAO audit. The FDIC may then set up a facility to guarantee debt, following policies and procedures determined by regulation, but the terms and conditions of the guarantees must be approved by the Secretary of the Treasury.

The Secretary will determine a maximum amount of guarantees, and the President will request Congress to allow that amount. Congress has 5 days to disapprove the request. Fees for the guarantees

are set to cover all expected costs. If there are losses, they are recouped from those firms that received guarantees.

Section 1156. Additional Related Amendments

The FDIC may not exercise its systemic risk authority to establish any widely available debt guarantee program for which Section 1155 would provide authority.

If any firm defaults on a debt guarantee provided under section 1155, the FDIC may appoint itself receiver of the company if it is an insured depository. If the defaulting firm is not an insured depository, the FDIC can require consideration that the company be put into the resolution mechanism pursuant to Section 203. If the company is not resolved in that fashion, the FDIC may file a petition for involuntary bankruptcy on behalf of the defaulting company.

Section 1157. Changes to Federal Reserve Governance

The Federal Reserve Act is amended to state that a member of the Board of Governors of the Federal Reserve shall serve as Vice Chairman for Supervision. The Vice Chairman, who will be designated by the President, by and with the advice and consent of the Senate, will develop policy recommendations regarding supervision and regulation for the Board, and will appear before Congress semi-annually to report on the efforts, objectives and plans of the Board with respect to the conduct of supervision and regulation.

The Federal Reserve Act is amended to give the Board of Governors of the Federal Reserve a formal responsibility to identify, measure, monitor, and mitigate risks to U.S. financial stability.

The Federal Reserve Act is amended to state explicitly that the Board of Governors of the Federal Reserve may not delegate to a Federal Reserve Bank its functions for establishing supervisory and regulatory policy for bank holding companies and other financial firms supervised by the Board.

To eliminate potential conflicts of interest at Federal Reserve Banks, the Federal Reserve Act is amended to state that no company, or subsidiary or affiliate of a company that is supervised by the Board of Governors can vote for Federal Reserve Bank directors; and the officers, directors and employees of such companies and their affiliates cannot serve as directors.

The Federal Reserve Act is amended to state that the Federal Reserve Bank of New York president, who is currently appointed by the district board of directors, will be appointed by the President, by and with the advice and consent of the Senate.