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ARNOLD & PORTER LLP

regulatory roundtable

New York Breakfast Series

CFPA, AFS, FIRA: Regulatory Reform Alphabet Soup—Making Sense of the Systemic Risk and Financial Regulatory Reform Legislative Proposals from the Obama Administration and Congress

December 17, 2009

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Tab 1: Agenda and Presentation Slides

ARNOLD & PORTER LLP

regulatory roundtable

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CFPA, AFS, FIRA: Regulatory Reform Alphabet Soup—Making Sense of the Systemic Risk and Financial Regulatory Reform Legislative Proposals from the Obama Administration and Congress

Agenda

8:00–8:30 a.m.	**Breakfast**
8:30–8:40 a.m.	**Welcome and Overview** A. Patrick Doyle, Partner, *Co-Chair, Financial Services Practice*
8:40–9:45 a.m.	**Presentations and Discussion** Kathleen A. Scott, Counsel, *Financial Services Practice* Beth S. DeSimone, Counsel*, Financial Services Practice* Matthew L. LaRocco, Senior Legislative and Policy Advisor, *Legislative and Public Policy Practice* I Overview II. Systemic Risk III. Resolution Authority IV. Regulatory Reform V. CFPA VI. Status of Legislation
9:45–10:00 a.m.	**Questions and Answers**

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CFPA, AFS, FIRA: Regulatory Reform Alphabet Soup—Making Sense of the Systemic Risk and Financial Regulatory Reform Legislative Proposals from the Obama Administration and Congress

December 17, 2009

Arnold & Porter LLP Panel Members

- Moderator:
  - **A. Patrick Doyle**, Partner, Co-Chair, *Financial Services Practice (NY)*
- Panelists:
  - **Beth S. DeSimone**, Counsel, *Financial Services Practice (DC)*
  - **Kathleen A. Scott**, Counsel, *Financial Services Practice (NY)*
  - **Matthew L. LaRocco**, Senior Legislative and Policy Advisor, *Legislative and Public Policy Practice (DC)*

Overview

- Systemic Risk
- Resolution Authority
- Regulatory Reform
- CFPA
- Status of Legislation

Systemic Risk Regulation and Resolution

Systemic Risk Regulation and Resolution

- Systemic Risk Regulator:
  - Administration Plan
    - Federal Reserve Board (FRB) and "Appropriate Regulatory Agency"
    - Financial Services Oversight Council (FSOC)
  - House Bill
    - Financial Services Oversight Council (Council)
  - Senate Bill
    - Agency for Financial Stability (AFS)

Systemic Risk Regulation and Resolution (cont'd)

- Jurisdiction of the Systemic Risk Regulator:
  - Administration Plan
    - US financial holding companies, bank holding companies, savings and loan holding companies, holding companies for insurance companies, registered securities broker dealers, futures commission merchants, or commodity pool operators
    - Includes subsidiaries (except for functionally regulated subsidiaries)
  - House Bill
    - Financial companies: companies that engage in whole or part in financial activities as defined in section 4(k) of the BHC Act; can include US subsidiary or affiliate of non-US company (except Farm Credit System-chartered institution)
  - Senate Bill
    - Bank holding companies: companies that engage in whole or part in activities "financial in nature" as defined in section 4(k) of the BHC Act; can include non-US company with "substantial assets or operations" in the United States

Systemic Risk Regulation and Resolution (cont'd)

- How Will Systemic Risk Be Determined?
  - Administration Plan
    - FRB (in consultation with federal regulator of any subsidiary) notifies a financial company of its proposed designation as a Tier 1 Financial Holding Company; company has 30 days to request written or oral hearing to contest proposed determination (process can be waived in an emergency)
    - Role of FSOC
  - House Bill
    - Council by majority vote, in consultation with FRB and any other primary financial regulatory agency, determines that a financial company should be subject to stricter standards; no express right prior to designation to contest, but post-decision appeal administrative process is to be developed and there is judicial review
  - Senate Bill
    - AFS notifies a financial company of its proposed designation as a "specified financial company (SFC);" financial company has 30 days to request written or oral hearing to contest proposed determination (process can be waived in an emergency)

Systemic Risk Regulation and Resolution (cont'd)

- Consequences of Designation by Systemic Risk Regulator
  - Administration Plan
    - Tier 1 Financial Holding Company must register with FRB
    - Stricter prudential standards (capital, leverage, liquidity, resolution plan, concentration limits, risk management) and PCA
    - FDIC back-up examination authority
    - Five years to conform activities to that of FHC under BHC Act
  - House Bill
    - Stricter prudential standards and PCA (capital, leverage, liquidity, resolution plan, concentration limits, risk management, transfer of assets, or termination of activities)
    - Treated as a BHC/FHC, subject to exceptions
    - Required to wall off most non-financial activities
  - Senate Bill
    - Stricter prudential standards and PCA similar to House
    - Could be required to wall off non-financial activities
    - SFCs need to register with Financial Institutions Regulatory Authority (FIRA)

Systemic Risk Regulation and Resolution (cont'd)

- Resolution Authority: Determination to Invoke:
  - Grounds for Invoking
    - Determination that financial company is in default or danger of default, failure of company would have severe adverse effects on US stability or economic conditions, and FDIC assistance would avoid or mitigate the adverse effects
  - Administration Plan:
    - Determination made by Treasury Secretary in consultation with the President, upon recommendation of FRB and appropriate regulatory authority
    - Applicable to bank holding companies, Tier 1 Financial Holding Companies and certain subsidiaries
  - House Bill
    - Determination of the Treasury Secretary, in consultation with the President, upon the recommendation of the FRB and the appropriate regulatory agency
    - Applicable to financial companies subject to stricter standards, bank holding companies, insurance companies, or other companies "predominantly" engaged in activities financial in nature or incidental thereto or subject to stricter standards (other than Farm Credit System-chartered institutions, Fannie Mae, Freddie Mac and Federal home loan banks) and subsidiaries (other than functionally regulated subsidiaries)
  - Senate Bill
    - Determination made by the Treasury Secretary, in consultation with the President, upon the recommendation of the FDIC (or SEC) and FIRA
    - Applicable to US SFCs and certain subsidiaries

Systemic Risk Regulation and Resolution (cont'd)

- Resolution Authority: FDIC Powers
  - Generally, FDIC follows procedures similar to those for receiverships of insured banks; can make loans, sell assets, assume or guarantee obligations, taking a lien on assets of the company
  - Administration Plan
    - FDIC could be appointed conservator of the company
    - FDIC permitted to purchase equity interests
  - House Bill
    - No conservatorship option; if company would be subject to the Bankruptcy Code, can use FDIC only if using Bankruptcy Code would be "systemically destabilizing;" insurance companies liquidated under state insurance laws
    - FDIC would act as receiver through an FDIC subsidiary called the Systemic Dissolution Authority
  - Senate Bill
    - No conservatorship option

Systemic Risk Regulation and Resolution (cont'd)

- Who Pays? (If not covered by assets of company being liquidated)
  - Administration Plan
    - Bank Holding Company Fund: assessments on bank holding companies, Tier 1 Financial Holding Companies and certain subsidiaries, with consolidated liabilities greater than US$10 billion
    - Can borrow from the Treasury Department
  - House Bill
    - Systemic Dissolution Fund: assessments by the FDIC on financial companies with total assets of US$50 billion or more (except for hedge funds, where the threshold is US$10 billion or more)(adjusted for inflation annually) pursuant to regulations issued by the FDIC in consultation with the Council and in accordance with factors laid out in the subtitle, with the maximum amount of the Fund at any time generally being US$150 billion
    - Can borrow from the Treasury Department
  - Senate Bill
    - Systemic Resolution Fund: assessments upon large SFCs (above US$10 billion), bank holding companies or other companies "predominantly" engaged in activities financial in nature or incidental thereto (other than insured depository institutions, insurance companies and registered broker dealers)
    - Can borrow from the Treasury Department

Systemic Risk Regulation and Resolution (cont'd)

- FRB Powers Revised:
  - Administration:
    - Treasury Secretary must consent to use of lending authority
  - House Bill
    - Restrictions on Federal Reserve Lending Authority: FRB, upon a written determination by the Council that a "liquidity event" exists that could destabilize the US financial system, and with the written consent of the Treasury Secretary (after certification by the President that an emergency exists) may authorize any Federal Reserve Bank to provide loans for an individual, partnership or corporation only as part of a broadly available credit or other facility, not only for a single and specific individual, partnership or corporation and only after the Federal Reserve Bank obtains evidence that such individual, partnership or corporation cannot otherwise secure adequate credit accommodations elsewhere
    - The GAO is given the authority to audit the FRB and the Federal Reserve Banks
      - Specific names of borrowers from the Federal Reserve Bank will be disclosed after one year
  - Senate Bill
    - Limitations on Federal Reserve Act Lending Authority: FRB's lending authority restricted to financial market utilities or payment, clearing or settlement activities that the AFS determines to be systemically important, or any program or facilities with broad-based participation
    - Review of Special Credit Facilities–Comptroller General power to audit credit facilities

Reorganization of Bank Supervision

Reorganization of Bank Supervision

- Current System
  - Banking supervision split among several agencies
  - BHC Act exempts several categories of “banks”
  - FHC Authority
  - No national insurance regulation and supervision
- Administration Plan
  - National Bank Supervisor
  - Elimination of certain BHC Act Exemptions
  - Office of National Insurance
  - Miscellaneous revisions:
    - FHC authority
    - Transactions with affiliates
    - Lending limits
    - Insider transactions
    - FRB examination assessment authority
    - Other assessment authority

Reorganization of Bank Supervision (cont'd)

- House Bill
  - OTS merged into OCC
  - OTS functions regarding savings and loan holding companies are transferred to the FRB
  - Elimination/revision of certain BHC Act exemptions
  - Federal Insurance Office
  - Miscellaneous revisions:
    - FHC authority
    - Transactions with affiliates
    - Lending limits
    - FRB examination assessment authority
    - *de novo* interstate branching

Reorganization of Bank Supervision (cont'd)

- Senate Bill
  - FIRA
  - Moratorium on chartering certain exempted "banks"
  - Study of BHC Act exemptions
  - Office of National Insurance
  - Miscellaneous revisions:
    - *de novo* interstate branching
    - FHC authority
    - Transactions with affiliates
    - Lending limits
    - Insider transactions

Consolidation of Consumer Protection Regulatory Authority

Consolidation of Consumer Protection Regulatory Authority

- Current System
- Administration Plan
- House Bill
- Senate Bill

The CFPA: The Consolidation of Consumer Protection Regulation

- Current System
  - Consumer protection diffused among different federal and state regulatory agencies
    - Financial Institutions: Supervision over consumer protection housed in divisions of the various federal bank regulatory agencies
    - Nonfinancial Institutions: Supervision over consumer protection housed in state agencies and at the FTC
  - Federal Reserve has authority to issue regulations of various federal consumer laws
  - Role of state attorney generals

Consolidation of Consumer Protection Regulation (cont'd)

- Administration plan
  - Creation of the Consumer Financial Protection Agency (CFPA)
  - Bank and non-bank federal consumer protection regulation and enforcement consolidated within the CFPA
    - Power transferred from bank regulatory and FTC
    - Federal Reserve rulemaking authority shifted
    - Backup role of FTC
  - Enhanced regulatory authority over consumer products and services
    - Minimum standards for unfair and deceptive practices
    - Enhanced disclosures
    - Fair dealing standards
    - Standard (plain vanilla) and alternative products and services
      - Repeal of preemption

The CFPA: Consolidation of Consumer Protection Regulation (cont'd)

- House Bill: HR. 3126
  - Rulemaking and regulation shifted from the federal bank regulatory agencies and FTC to CFPA
    - FTC back-up authority enhanced
    - State enforcement of laws enhanced
  - Enforcement of laws retained at bank regulatory agencies for 98% of financial institutions (banks and credit unions)
  - Persons covered by law narrowed—exceptions put in place
  - Enhanced regulatory authority over consumer products and services remain
    - No more "plain vanilla" requirements
    - Other enhanced provisions remain:
      - Minimum standards for unfair and deceptive practices
      - Enhanced disclosures
      - Fair dealing standards
  - Preemption of state law—"Barnett Bank" standard reinstated

The CFPA: Consolidation of Consumer Protection Regulation (cont'd)

- Senate Bill
  - Rulemaking, regulation, and enforcement authority shifted from the federal bank regulatory agencies and FTC to CFPA
  - Persons covered by law not as narrow as in House bill
  - Enhanced regulatory authority over consumer products and services remain
    - No "plain vanilla" requirements
    - Other enhanced provisions remain:
      - Minimum standards for unfair and deceptive practices
      - Enhanced disclosures
      - Fair dealing standards
  - Preemption of state law—currently narrower than what passed in House bill
  - CFPA provisions being rewritten by Dodd and Shelby

Current Status of the Bills

Current Status of House Bill HR 4173

- The House has passed the Wall Street Reform and Consumer Protection Act by a vote of 223-202
- The legislation will require additional consumer protections and impose constraints on Wall Street
  - Overall the bill will:
    - Create a Consumer Financial Protection Agency and Financial Stability Council
    - Regulate over-the-counter derivatives
    - Direct the Federal Reserve Board to impose stricter prudential standards on a financial holding company in certain circumstances
    - Provides for dissolution of large companies the default of which would have serious adverse effect on US economy
    - Strengthens home mortgage regulation
    - Require the registration of hedge funds
    - Direct the Comptroller General to audit and report to Congress on all actions taken by the Federal Reserve Board and the Federal Reserve Banks
    - Safeguard investors by ordering studies within the securities industry and identify needed reforms

Current Status of House Bill HR 4173 (Cont'd)

- The final bill incorporated several amendments designed to overhaul the way the financial industry is regulated including:
  - Authorization of US$4 billion in new housing relief and expands the federal preemption of state consumers law
  - Reduction to 10% the size of a haircut that the Federal Deposit Insurance Corporation (FDIC) could impose on secured creditors of failing financial firms placed into receivership
  - Cap the FDIC's guarantee authority at US$500 billion under a debt guarantee program
- The House was able to defeat various amendments that would have narrowed portions of the legislation
  - The chamber rejected Rep. Minnick's amendment, that would have created a "council of regulators" instead of the Consumer Financial Protection Agency
  - Also rejected was Ranking Member Bachus' amendment to create a streamlined bankruptcy process as a replacement for the creation of a resolution authority to overtake troubled financial firms

Current Status of the Senate Bill

- Senate Bill Current Status
- Senate Banking Chairman Chris Dodd (D-CT) and Ranking Member Richard Shelby (R-AL) working on a bipartisan banking reform bill to overhaul financial industry regulations
    - On November 19, 2009, Dodd was prepared to move forward with partisan overhaul legislation; however, he received pushback and opposition from both sides of the aisle
    - Republicans saw the need for a bi-partisan bill and agreed to work with Democrats on regulatory reform
  - Dodd began working with Shelby on appointing working groups, made up of one member from each party, in four specific and critical areas to the bill
    - Dodd/Shelby - CFPA and Single Bank Regulator
    - Reed/Gregg - Derivatives and Credit Rating Agencies
    - Schumer/Crapo - Corporate Governance and Executive Compensation
    - Warner/Corker - Resolution Authority and Systemic Risk

Current Status of the Senate Bill (Cont'd)

- Dodd and Shelby have asked that the working groups provide status reports on their respective issues between now and Christmas
  - Dodd may use the reports to determine if they should move forward with a partisan or bipartisan bill
  - Agreements in principle have already been made on small community bank issues
  - Institutions under US$10 billion
  - Bean Amendment (House)
- Dodd will continue to push for a bipartisan bill; however, if he finds that a bipartisan bill is no likely or they are too far apart on finding common ground he will move forward on a partisan bill

Q&A

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Tab 2: Moderator/Speaker Biographies

A. Patrick Doyle

Partner

Patrick Doyle has a broad background in financial institution regulation and has headed the firm's financial services practice group since 1993.

Mr. Doyle regularly counsels bank holding companies, foreign banks, savings institutions, insurance companies, securities firms, hedge funds, and private equity entities on a wide variety of regulatory matters, including strategic planning, complex regulatory issues, enforcement proceedings (particularly those involving allegations of violations of the "control" regulations), and legislation. In addition, he has represented firm clients on numerous mergers and acquisitions. Mr. Doyle is recognized for his ability to devise creative solutions to complex regulatory issues, developed over 25 years of representing clients on cutting edge regulatory matters. He is currently advising some of the nation's largest financial services companies on the impending reregulation of the financial services industry. He regularly appears before the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency and the Office of Thrift Supervision, and numerous state banking regulators.

Prior to joining Arnold & Porter LLP in 1983, Mr. Doyle served as Deputy General Counsel and Acting General Counsel of the Federal Home Loan Bank Board and earlier served in a variety of legal positions at the US Department of the Treasury, Office of the Comptroller of the Currency, including Counsel to the Multinational Banking Group. Mr. Doyle served on the adjunct faculty of the Morin Center for Banking Law Studies at Boston University School of Law from 1985 to 1993, and currently serves on the Board of Advisors of the University of North Carolina School of Law's Banking Law Institute.

Mr. Doyle is a frequent lecturer both in the US and abroad on topics related to the regulation of the financial services industry.

Representative Matters

- **Federal Housing Finance Agency** in connection with its appointment as the conservatorship of Fannie Mae and Freddie Mac.

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Practice Areas

Financial Services (practice chair)
Litigation
Corporate and Securities
Subprime Lending Regulation, Enforcement & Litigation

Education

JD, Syracuse University College of Law, 1975
BA, State University of New York at Oswego, 1970

Admissions

District of Columbia
New York

- **State Farm Mutual Insurance Company** in connection with the chartering of State Farm Bank.
- **State Farm Bank** in connection with preemption litigation.
- **Farallon Group** in connection with a non-controlling investment in a depository institution holding company.
- **Countrywide** in connection with the conversion of its national bank subsidiary to a federal savings bank. At the time the largest charter conversion in history.
- **Merrill Lynch** in connection with the reorganization of Merrill Lynch Federal Savings Bank's mortgage banking operations.
- **Ichan Capital Partners (ICP)** in connection with ICP's non-controlling investment in a savings and loan holding company.
- **Sovereign Bancorp Inc.** in its proxy/control contest with activist shareholder Relational.
- **BB&T Corporation** in more than 30 acquisitions since 1990.
- **M&T Bancorp** in more than 10 acquisitions since 1990.

Rankings

- *Chambers USA: America's Leading Lawyers for Busines*s 2009 for Financial Services Regulation: Banking & Securities (Regulatory Compliance)
- *Washingtonian's* "Top Lawyers" 2009 for Financial Services
- *The Best Lawyers in America* 2010 for Banking Law
- *International Who’s Who of Business Lawyers* 2008 for Banking

Articles

- A. Patrick Doyle, David F. Freeman, Jr and Beth S. DeSimone. "Private Equity Investment in US Financial Institutions: Promises and Challenges" *World Law Reports*, Spring 2009.
- A. Patrick Doyle, David F. Freeman, Jr and Beth S. DeSimone. "Private Equity Investment: Navigating The Mine Fields" *Financial Services Law360*, October 2008.
- A. Patrick Doyle and Robert E. Mannion. "Opportunities and Challenges for Financial Institutions in the US" Global Banking and Financial Policy Review Dec. 2000.
- A. Patrick Doyle and Beth S. DeSimone. "Unitary Thrift Holding Company Worry is Overdrawn" The National Law Journal, Volume 21, Number 37, May 10, 1999.
- A. Patrick Doyle and Robert E. Mannion. "Client Memo: Banking Legislation Still Pending in the House and Senate" Arnold & Porter Bulletin Apr. 1998.
- A. Patrick Doyle and Beth S. DeSimone. "Client Memo: Financial Institutions Practice" January 11, 1996.

Presentations

- A. Patrick Doyle. "Financial Services Reform: What the Regulatory Overhaul Means for Clients" Telephone Seminar / Audio Webcast, American Law Institute / American Bar Association (ALI-ABA) November 17, 2009.
- A. Patrick Doyle. "Financial Services Reform: What the Regulatory Overhaul Means for Clients" Telephone Seminar / Audio Webcast, American Law Institute / American Bar Association (ALI-ABA), September 22, 2009.
- Alan Avery, Kevin F. Barnard, A. Patrick Doyle and Kathleen Scott. "Treasury's Financial Stability Plan and Framework for Financial Regulatory Reform: An Overview and Update on Key Programs" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, April 23, 2009.
- Martha L. Cochran, A. Patrick Doyle and John D. Hawke, Jr.. "The Obama Administration and the New Congress: Outlook for Financial Services Legislative and Regulatory Initiatives" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, February 5, 2009.
- Kevin F. Barnard, A. Patrick Doyle and Brian C. McCormally. "Resolving Failed Banks: Issues for Creditors, Counterparties, Potential Investors, and Others" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, December 16, 2008.
- Alan Avery, A. Patrick Doyle and David F. Freeman, Jr. "Private Equity Investments in Financial Institutions: Regulatory Issues Associated with Investments in Banks, Thrifts, and Their Holding Companies" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, November 18, 2008.
- David S. Berg, Alan Avery, Kevin F. Barnard and A. Patrick Doyle. "Emergency Economic Stabilization Act: Statutory Structure, the Implementing Regulations and Procedures, and Practice Implications of TARP" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, October 28, 2008.

Advisories

- "FDIC's Structured Loan Portfolio Sales from Failed Institutions on the Rise." Oct. 2009.
- "FDIC Final Statement of Policy on Qualifications for Failed Bank Acquisitions." Sep. 2009.
- "FDIC Proposed Guidance on Private Equity Investments in Failed Depository Institutions." Jul. 2009.
- "Proposal to Reform Financial Regulation Contemplates Significant Changes." Jun. 2009.
- "Treasury's Public-Private Investment Program for Legacy Loans and Securities." Apr. 2009.
- "Summary of Treasury's Capital Assistance Program." Mar. 2009.
- "What's Coming for Financial Institutions, Issuers, and Market Participants?." Mar. 2009.
- "Stimulus Bill Amends Restrictions on Executive Compensation Under TARP." Feb. 2009.
- "Treasury Announces the Financial Stability Plan." Feb. 2009.
- "Treasury Announces New Restrictions on Executive Compensation." Feb. 2009.

- "Continued Participation In or Opt Out of the FDIC Debt Guarantee Program." Dec. 2008.
- "US Treasury Announces Details and Guidelines for Capital Purchase Program." Oct. 2008.
- "Bank Acquisitions--Congress May Review Recent Treasury Notices." Oct. 2008.
- "US Treasury Announces Capital Purchase Program for Qualifying Financial Institutions." Oct. 2008.
- "Implementation Begins on US Emergency Financial Relief Program." Oct. 2008.
- "The Federal Reserve Board Policy Statement on Equity Investments Relaxes Restrictions on Minority Investments in Banks and Bank Holding Companies." Sep. 2008.

Beth S. DeSimone

Counsel

Beth DeSimone practices in the corporate and financial institutions areas. She structures and negotiates mergers and acquisitions and investments of financial services companies. She also focuses on establishing new financial institutions and nonbank subsidiaries for financial services and diversified companies, and assisting institutions in strategic planning and charter review (state versus national bank or federal savings bank). In addition, she drafts and reviews necessary corporate documentation and regulatory applications for *de novo* entities, investments, and mergers and acquisitions.

Ms. DeSimone also concentrates in the consumer banking area. She structures lending and deposit programs for banks and financial services companies, including lending programs that facilitate the exportation of interest rates from one state to another. She negotiates business alliances to expand consumer product and services opportunities to new customers, using new technologies. She also assists in structuring and resolving issues associated with new card products and alliances, including international remittance cards, payroll cards, government benefit cards, health savings account cards, gift cards, and other prepaid card products. Ms. DeSimone is a regular contributor to the blog on consumer marketing legal issues, www.consumeradvertisinglawblog.com.

Ms. DeSimone assists in resolving regulatory issues arising under mortgage and other lending activities, including those arising under the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, and the Truth in Lending Act, and assists clients in monitoring the effectiveness of their fair lending programs.

Professional and Community Activities

Professional Activity

- Board member and former Chair, Quest, Inc., Orlando Florida (largest nonprofit in Central Florida that assists the disabled).
- Member, Advisory Committee, William & Mary Marshall-Wythe School of Law's *Journal of Women and the Law*

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Practice Areas
Financial Services
Information Security
Privacy
Subprime Lending Regulation, Enforcement & Litigation
Consumer Protection and Advertising

Education
JD, College of William and Mary, 1984
BA, Wheaton College, 1981

Admissions
District of Columbia
Florida

Community Activity

- Board of Trustees of Trinity Preparatory School, Winter Park, FL.

Books

- Beth S. DeSimone and Martha L. Cochran. "Chapter 11: Communications with Federal Financial Regulatory Agencies Under the Lobbying Disclosure Act" The Lobbying Manual: A Complete Guide to Federal Lobbying Law and Practice, Fourth Edition, Published by ABA's Section of Administrative Law and Regulatory Practice, August 2009.
- Beth S. DeSimone, Howard L. Hyde and Michael B. Mierzewski. "Chapter II (Antitrust Law Section)" ABA Bank Mergers and Acquisitions Handbook 2006 (Chicago: ABA, 2006).

Articles

- A. Patrick Doyle, David F. Freeman, Jr and Beth S. DeSimone. "Private Equity Investment in US Financial Institutions: Promises and Challenges" *World Law Reports*, Spring 2009.
- Michael B. Mierzewski, Beth S. DeSimone and Jeremy W. Hochberg. "FDIC's Loan Modification Program and Loss Sharing Proposal" *Real Estate Finance* February 2009.
- Michael B. Mierzewski, Beth S. DeSimone and Jeremy W. Hochberg. "Federal Bank Regulators Adopt New Rules Curtailing Unfair and Deceptive Credit Card Practices and Modifying Disclosure Requirements" *Electronic Banking Law & Commerce Report* February 2009.
- A. Patrick Doyle, David F. Freeman, Jr and Beth S. DeSimone. "Private Equity Investment: Navigating The Mine Fields" *Financial Services Law360*, October 2008.
- Beth S. DeSimone, Jeremy W. Hochberg and Olayemi Y. Abayomi. "State Law Developments in the Regulation of Payroll Cards" The Review of Banking & Financial Services, Vol. 24, No. 8, August 2008.
- Beth S. DeSimone. "Payroll Cards: Would You Like Your Pay With Those Fries?" North Carolina Banking Institute Journal, April 2005.
- A. Patrick Doyle and Beth S. DeSimone. "Unitary Thrift Holding Company Worry is Overdrawn" The National Law Journal, Volume 21, Number 37, May 10, 1999.
- A. Patrick Doyle and Beth S. DeSimone. "Client Memo: Financial Institutions Practice" January 11, 1996.

Presentations

- Beth S. DeSimone. "Non-Mortgage Lending: The 'Sleeper' Consumer Risks" 2009 CRA & Fair Lending Colloquium, New Orleans, LA, October 7, 2009.

Webcasts

- Beth S. DeSimone. "Bank Asset Acquisitions by Private Equity and Other Non-Bank Investors: Navigating Federal Regulations and Policies in Structuring Transactions" December 1, 2009.
- Michael B. Mierzewski, Beth S. DeSimone and Ahmad Hajj. "CARD Act: Navigating the Complex New Rules for Credit Card Lending" October 13, 2009.

Advisories

- "Federal Reserve Proposes Rules to Restrict Fees and Expiration Dates on Gift Cards." Dec. 2009.
- "Federal Reserve Issues Final Rule on Overdraft Fees." Nov. 2009.
- "FDIC Final Statement of Policy on Qualifications for Failed Bank Acquisitions." Sep. 2009.
- "Proposed Amendments to Reg. Z Relating to Closed-End Mortgages and HELOCs." Aug. 2009.
- "FDIC Proposed Guidance on Private Equity Investments in Failed Depository Institutions." Jul. 2009.
- "Proposal to Reform Financial Regulation Contemplates Significant Changes." Jun. 2009.
- "The Newly Enacted Credit CARD Act Tightens Agency Regulations." Jun. 2009.
- "The New White House 'Cyber Czar'." Jun. 2009.
- "New Proposals Clarify the July 2010 Credit Card Regulations." May. 2009.
- "Treasury's Public-Private Investment Program for Legacy Loans and Securities." Apr. 2009.
- "What's Coming for Financial Institutions, Issuers, and Market Participants?." Mar. 2009.
- "Summary of the Obama Administration's Homeowner Affordability and Stability Plan." Feb. 2009.
- "Certain of HUD's Revised RESPA Regulations Went into Effect January 16, 2009." Jan. 2009.
- "New Rules Curtailing Unfair and Deceptive Credit Card Practices." Jan. 2009.
- "FDIC's Loan Modification Program and Loss Sharing Proposal." Dec. 2008.
- "The Federal Reserve Board Policy Statement on Equity Investments Relaxes Restrictions on Minority Investments in Banks and Bank Holding Companies." Sep. 2008.

Kathleen Scott

Counsel

Kathleen Scott is a counsel in the financial services group, where she represents banking clients with respect to the regulatory aspects of mergers and acquisitions, establishment of new banking organizations and non-banking affiliates, and other transactions. Ms. Scott concentrates her practice on providing bank advisory legal advice to foreign and domestic banks on a broad range of bank regulatory issues, and interacts regularly with federal and New York state banking regulators. She also counsels banking organizations and other financial institutions on their compliance with federal consumer, privacy, and anti-money laundering legislation and regulations. In addition, she provides US bank regulatory assistance to the firm's transactional practice groups.

Prior to joining the private sector, Ms. Scott served as a senior staff attorney at the New York State Banking Department, where she focused on international banking matters. While at the New York State Banking Department, she also worked on several major enforcement actions, oftentimes in conjunction with other state and federal regulatory agencies, and now in private practice continues to represent clients facing enforcement or other supervisory actions brought by state and federal banking regulators. She also has been a member of the Connecticut Banking Commissioner's working group, dedicated to international banking matters.

Ms. Scott has extensive experience in bank liquidation matters, having assisted in the liquidation of the New York office of the Bank of Credit and Commerce International, S.A., and the liquidation of Nationar, an uninsured "banker's bank" for the thrift industry. She has also co-drafted many of the amendments to the New York Banking Law that were made after each of these liquidations.

Ms. Scott began her career at the United States Department of the Treasury, in the legal division of a Treasury bureau and then in the Office of the Assistant General Counsel for Enforcement, where she concentrated on financial enforcement matters such

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Practice Areas
Financial Services
Financial Institutions
Information Security

Education
JD, American University, Washington College of Law, 1982
BA, Villanova University, 1979

Admissions
New York
District of Columbia

as anti-money laundering statutes and regulations. At the Department of Treasury, her responsibilities included advising on policy positions, drafting regulations, and speaking to the industry on compliance and enforcement issues. She continues to advise financial institutions, other businesses, and non-profit organizations on compliance with their responsibilities under the US anti-money laundering laws, including the enhancements to these laws enacted as part of the 2001 USA PATRIOT Act.

Representative Matters

- Obtained federal and state regulatory approvals for numerous clients regarding financial holding company status, mergers, acquisitions, and new products.
- Developed and implemented plan for chartering of a bank by a major non-bank financial institution, including obtaining all state and federal regulatory approvals.
- Obtained the first "complementary to financial" order from the Federal Reserve Board on an insurance-related product.
- Developed and implemented strategies for the US expansion of a major foreign bank, including seeking all state and federal regulatory approvals.
- Negotiated major enforcement actions from both the private sector and public sector sides for US banks and US offices of foreign banks, and assisted clients with enforcement action compliance.
- With respect to the reorganization of a major Italian bank, obtained US federal and New York state regulatory approvals, and coordinated other US state approvals.
- Developed and implemented strategies regarding, and obtained regulatory approvals for, internal reorganizations for certain US banking organizations, including preparation of all corporate documents and regulatory applications.
- Certified as a New York state foreign bank liquidation law expert for purposes of testifying in Bankruptcy Court in a unique bank liquidation case.
- Supervised outside counsel in connection with liquidations by the New York Superintendent of Banks of a state-chartered bank and a state-licensed agency of a foreign bank.
- Responsible for drafting several federal anti-money laundering regulations.
- Assisted in drafting legislation at the federal and state levels, including a major revision of New York laws regarding bank liquidation and the New York state interstate branching law.
- Worked on numerous state and federal regulatory approvals needed for Deutsche Bank AG to acquire Bankers Trust Corporation.
- Represented the receiver of a failed New York bank, who under unique circumstances had been appointed to that position by the New York Superintendent of Banks.

Awards

- Annual Gala Honoree, Appleseed Spring Gala, 2006

Rankings

- *New York Super Lawyers* 2009 for Banking

Professional and Community Activities

- Chair, New York City Bar, Banking Law Committee, 2006-2009
- Member, New York State Bar Association, Banking Law Committee

Books

- Kathleen Scott and Elizabeth Tibbals Davy. "State Regulation of Foreign Banks" Regulation of Foreign Banks, 5th edition (New York: Matthew Bender, 2008).

Articles

- Kathleen Scott. "Cross-Border Resolution and International Banks" *New York Law Journal* Nov. 2009.
- Kathleen Scott. "Will Strengthening Capital Standards Forestall the Next Banking Crisis?" *New York Law Journal* Sep. 2009.
- Kathleen Scott. "U.S. and EU Proposed Regulatory Reforms: Chance for Real Change?" New York Law Journal, July 15, 2009.
- Kathleen Scott. "Introductory Note to Recent Publications by Group of Twenty and Group of Thirty" *International Legal Materials* 48 ILM 413 Jun. 2009.
- Kathleen Scott. "Systemic Risk of Another Kind: Influenza Pandemic?" New York Law Journal, May 13, 2009.
- Kathleen Scott. "Addressing the Conditions Leading To 'Systemic Risk' on a Global Basis" New York Law Journal, March 18, 2009.
- Kathleen Scott. "Panel Sets Eight 'Building Blocks' To Stem Economic Crisis" New York Law Journal, January 14, 2009.
- Kathleen Scott. "TARP, CPFF, TLGP, and the US Offices of Non US Banks" *New York Law Journal* November 19, 2008.
- Kathleen Scott. "Trade-Based Money Laundering" New York Law Journal, September 17, 2008.
- Kathleen Scott. "The Committee on Foreign Investment in United States" New York Law Journal, July 16, 2008.
- Kathleen Scott. "Banks and Economic Upheaval" New York Law Journal, May 14, 2008.

- Kathleen Scott. "Country Risk: Discerning Short, Long-Term" New York Law Journal, March 18, 2008.
- Kathleen Scott. "Pandemic Planning" New York Law Journal, January 9, 2008.
- Kathleen Scott. "The Ratings Routine" New York Law Journal, November 14, 2007.
- Kathleen Scott. "Anti-Money Laundering Compliance for Banks in the United States: An Introduction" *BNA's Tax Planning International: Special Report on Anti-Money Laundering* November 2007.
- Kathleen Scott. "Exactly How Much Diligence Is Due?" New York Law Journal, September 19, 2007.
- Kathleen Scott. "Maritime Writs of Attachment: Banks Caught in Middle" New York Law Journal, July 18, 2007.
- Kathleen Scott. "International Banks in the United States and Basel II" New York Law Journal May 16, 2007.
- Kathleen Scott. "Third EU Money Laundering Directive: Changes in U.S.?" New York Law Journal, March 21, 2007.
- Kathleen Scott. "Outsourcing: What International Banks Should Know" New York Law Journal, January 16, 2007.
- Kathleen Scott. "How to Handle an Enforcement Action" New York Law Journal, November 15, 2006.
- Kathleen Scott. "U.S. Report Card on AML Standards" New York Law Journal, September 20, 2006.
- Kathleen Scott. "International Banking: Anti-Money Laundering and International Standards" New York Law Journal, July 5, 2006.
- Kathleen Scott. "International Banking Cross-Border Funds Transfers, Financial Holding Companies" New York Law Journal, May 17, 2006.
- Kathleen Scott. "Foreign Banks: Establishing a Presence in the United States--Part II" New York Law Journal, March 15, 2006.
- Kathleen Scott. "U.S. Market Prospects for an International Bank" New York Law Journal, January 4, 2006.
- Kathleen Scott. "International Banks and Net Capital Rules" New York Law Journal, November 7, 2005.
- Kathleen Scott. "Deposit Insurance Systems Around the World" New York Law Journal, September 7, 2005.
- Kathleen Scott. "International Banking in the United States" New York Law Journal, July 6, 2005.

Presentations

- Alan Avery, Kevin F. Barnard, A. Patrick Doyle and Kathleen Scott. "Treasury's Financial Stability Plan and Framework for Financial Regulatory Reform: An Overview and Update on Key Programs" Arnold & Porter LLP, Financial Services Regulatory Roundtable, New York, NY, April 23, 2009.

Matthew L. LaRocco

Senior Legislative and Policy Advisor

Prior to his joining Arnold & Porter LLP in May 2006, Matthew LaRocco was General Manager at Fleishman-Hillard Government Relations (FHGR) where he brought to his clients an expansive knowledge and years of experience in both the public and private sectors, from the Clinton Administration to strategic campaign planning and execution. His fluency of the legislative process and his use of strong bipartisan relationships on Capitol Hill have made him an expert in lobbying, coalition building and public relations for the clients of Arnold & Porter LLP.

At FHGR, he launched two of the firm's strongest practice groups: financial services and homeland security. He has represented an extensive variety of Fortune 500 clients and has maintained a strong, consistent record of success on their issues before Congress.

Before joining Fleishman-Hillard Government Relations in 2001, Mr. LaRocco was President and co-founder of LaRocco & Associates, a lobbying firm focused on financial services. In this role, Mr. LaRocco, along with his father The Honorable Larry LaRocco, represented Metlife, the American Bankers Association, Brown & Co. and a host of other financial services clients.

Mr. LaRocco served as a political appointee within the Clinton administration in the office of the Secretary of the Interior. As a special assistant to Secretary Bruce Babbitt, Mr. LaRocco gained an intimate perspective of the issues and policy matters facing the Department.

Political campaigns are a natural for Mr. LaRocco, who cut his teeth on politics during his father's initial bid for the US House of Representatives in 1982. He later worked on The Honorable LaRocco's successful bids for Congress in 1990 and 1992 as a field and grassroots strategist. In 1994, he served as Latah County coordinator for Congressman LaRocco's re-election campaign and was chosen as field coordinator for all Democratic challengers in North Idaho for the campaign efforts in 1996. He later went on to become campaign manager for a successful statewide candidate in the Pacific Northwest where he devised strategies to increase candidate identification, fundraising and served as campaign spokesperson.

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Practice Areas
Legislative and Public Policy

Education
Negotiation and Conflict Resolution Training, Scotwork Advanced Negotiating Skills, 2006

Mediation and Conflict Resolution Training, Rosenberg Mediation Training, San Francisco, 1998

BA, University of Portland, 1992

Admissions
Not admitted to the practice of law

Mr. LaRocco holds a Bachelor of Arts degree from the University of Portland, has studied at Pau University, France, and the University of Vienna, Austria, and is trained in mediation and negotiation.

Professional and Community Activities

- Mr. LaRocco was a founding Board Member at Hope Academy in Washington, DC, 2005, where he assisted in emphasizing scholastic achievement, leadership, and perseverance for students in grades 5 through 8.

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ARNOLD & PORTER LLP

Tab 3: Arnold & Porter LLP’s Financial Services Practice Group Overview

FINANCIAL SERVICES

Widely acknowledged as one of the nation's premier financial services practices, the Arnold & Porter LLP team of over 30 lawyers provides US and international financial institution clients with comprehensive regulatory, litigation, and transactional services. The practice group handles complex regulatory and transactional issues and litigates cases involving the financial services industry at the administrative level and in the state and federal courts, including the US Supreme Court.

The practice group is recognized for developing innovative structures and novel solutions to regulatory issues, which allow clients to optimize their business strategy. Clients include a broad cross-section of bank holding companies, thrift institutions, foreign banks, insurance companies, securities firms, investment managers, electronic commerce businesses, and foreign governments.

Located primarily in Washington, DC, and New York, the practice group offers extensive experience in dealing with financial institutions and securities regulatory agencies, both federal and state. Several members of the practice group have served in senior positions at the key federal regulatory agencies. The team is supported by the full interdisciplinary resources of Arnold & Porter, including the corporate and securities, antitrust, tax, ERISA, trusts, environmental, and intellectual property practice groups.

Anti-Money Laundering and USA Patriot Act Defense

We have been active in a variety of Patriot Act, anti-money laundering, and computer security matters for our financial services clients, including internal investigations, defense of enforcement actions and civil and criminal litigation, development and documentation of compliance programs, public policy issues, and regulatory counseling. Our information privacy and security team includes former federal prosecutors as well as former senior officials from the US Department of Justice, the Federal Trade Commission, the Central Intelligence Agency, the National Security Administration, the Department of Defense, and the US federal banking agencies.

Antitrust and Competition

Bank mergers are unique in the antitrust world. Both the process and standard of review are different from those followed in the antitrust review of mergers in other industries. We assist clients in analyzing potential transactions and shepherd them through the multiple agency review process. Historically, we have had one of the leading bank mergers and acquisition practices in the US. In this regard, for the last two decades, our team has been involved in shaping some of the most complex divestiture proposals ever designed to cure competitive concerns. Our lawyers were instrumental in preparing the Bank Mergers and Acquisitions Handbook, a leading reference manual devoted to this area of law. In addition, as a full-service firm, we are also able to draw upon the resources of our consistently top-ranked antitrust and competition practice in such instances as when a non-bank is being acquired and FTC issues are raised.

Charter Assessment

We regularly assist clients in assessing which is the optimal charter to operate under to best meet their business goals. We have extensive experience in advising clients on the advantages and disadvantages of the various types of charters—state bank charter, national bank charter, federal savings bank charter, or a specialized or limited purpose charter—and the implications of a charter choice on the parent holding company. As one of the few national firms with a separate, sophisticated thrift practice, we have been at the forefront in developing novel uses for thrift charters, especially by securities and insurance companies, in addition to advising our bank holding company clients on such matters. In the last several years, we have represented several of the nation's largest insurance and securities companies in forming federal savings banks in order to offer banking services to their customers.

Corporate Control Contests and Corporate Governance

We help financial institutions develop takeover defenses, handle unsolicited takeover attempts, and prepare shareholders' rights plans, and we advise on corporate governance and shareholder relations issues. We also represent acquirors in takeovers, offering special value in resolving regulatory and antitrust issues raised by proposed transactions.

Enforcement Counseling and Defense

We assist individuals and institutions—and their boards of directors and holding companies—with the negotiation of consent agreements, memoranda of understanding and other written settlements, the development of compliance programs, and the defense of enforcement actions in administrative and judicial proceedings, and in addressing financial reporting and disclosure issues presented by agency enforcement initiatives. We also represent officers and directors, accountants, and other professionals in actions by receivers of insolvent financial institutions and in shareholder suits.

We are experienced in such currently high-profile issues as subprime lending, vendor management, privacy, nontraditional lending products and practices, money laundering, bank secrecy, and various activities considered inconsistent with safe and sound practices. In addition, we have substantial experience representing individuals and entities who are alleged to have the control provisions of the Change in Bank Control Act, the Bank Holding Company Act and the Savings and Loan Holding Company Act. Many of our attorneys have served as senior enforcement officials or on the enforcement staffs of the federal banking agencies, adding depth and insight to our representation of clients in enforcement matters.

Financial Products and Services

Helping financial institutions enter new lines of business and structure new products and services is a major focus of our financial services practice. We represent clients in establishing, acquiring, and operating lines of business, including securities underwriting and dealing; brokerage; investment advising; mutual and hedge funds; pension servicing; credit, debit, and other card operations; funds and other money transmission; fiduciary and investment management activities; insurance; and leasing.

- **Broker-Dealer and Investment Advisers.** We represent broker-dealers and investment advisers on regulatory matters related to their creation, expansion, services, and operations.

- **Private Investment and Private Banking.** We represent numerous clients in the creation, operation, and offering of private investment funds, in establishing and structuring the management companies that operate private equity and venture capital funds, and in connection with portfolio investment transactions by the funds. We advise clients on new fund development and structuring, required documentation, and compliance with state and federal securities and banking laws. We are also familiar with issues relating to specialized investment funds, such as SBICs, business development companies, collective investment funds, and employee securities companies. Drawing on the resources of our trust and estates, ERISA, and tax attorneys, our financial services team also represents clients in the bank regulatory and fiduciary law aspects of running a trust department.

- **Special Purpose Institutions.** Our lawyers have helped create special purpose institutions designed to take advantage of favorable regulatory treatment and exploit niche markets. For example, we assist clients in establishing non-depository banks and thrifts created to offer trust services on a nationwide basis, as well as credit card and other limited purpose institutions.

- **Credit Card/Debit Card/Stored Value and Payments Systems.** We assist clients in the card area with litigation, product development, and regulatory policy, and in negotiations of their processing, co-branding, and other agreements. Our clients include representatives of all parts of the credit and debit card industry, including one of the major credit card associations, card issuers, diversified financial services companies offering card products, merchant processors, merchants, and ATM and POS operators. We represent clients that operate other types of payment systems, as well. Clients in this area include funds and other money transmitting companies, a major government-sponsored enterprise, and merchants in a variety of online businesses. Our work for these organizations has included product development, assistance with mergers and acquisitions, advice on compliance with a variety of regulations, development and documentation of internal policies and procedures, documentation of system rules and policies for users, and various commercial, litigation, and regulatory matters.

Financial Services Consumer Protection

We advise clients, including regulated financial institutions, mortgage lenders, and other specialty consumer and commercial lending companies on various consumer credit issues. For example, we counsel clients on exporting interest rates and fees on loans and on the practical implications and limitations of this exportation power; we review client compliance with federal and state consumer credit laws, including the Real Estate Settlement Practices Act, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, and the Fair Credit Reporting Act, and undertake risk assessments of these areas; we structure lending programs to be compliant with the consumer lending laws; we defend clients that are sued for alleged violations of the consumer credit and consumer protection laws; and we advise clients regarding the agencies' published standards and statements of policy relating to lending practices in the consumer credit area.

In the fair lending area, we regularly assist clients in successfully resolving allegations of violations of the fair lending laws brought by the federal agencies in the earliest stages of the process, thereby avoiding costly and onerous settlements. We also advise clients on the rapidly changing area of subprime and "predatory" lending, and in providing affordable lending products consistent with the fair lending laws. We work with clients whose novel activities do not fit within the traditional banking model to develop innovative strategic plans to satisfy their Community Reinvestment Act (CRA) responsibilities and have advised investors in and organizers of community development-focused banks and CDCs. We are also experienced in addressing CRA protests raised against clients by parties challenging merger and acquisition transactions.

Financial Services Litigation

Financial services clients benefit from our extensive firmwide litigation resources and experience. Professionals in each of our offices regularly handle disputes on behalf of financial services clients, whether arising in a civil litigation/class action context, mediation and arbitration, or in a civil enforcement context. Our clients include financial services companies, banks, thrifts, officers and directors, law firms, accounting firms, other experts and consultants, and parties having dealings with failed institutions. Our representations have included litigation involving issues of federal preemption of state laws; litigation against the federal government for losses caused by changes in legislation that made so-called "supervisory goodwill" ineligible for treatment as regulatory capital; litigation defending financial services companies against alleged violations of consumer protection laws; litigation concerning grants and denials of permission to engage in nonbanking activities and in administrative enforcement proceedings; litigation over commercial transactions, employment issues, and fiduciary relationships of financial services firms; and litigation defending a card association in various antitrust suits filed by merchants and rival card associations.

Our firm's experience includes client representation in lawsuits and investigations stemming from consumer mortgage lending. The firm also has experience in lender liability litigation arising from, among other things, loan commitments and modifications, alleged untimely or improper disbursements of loan proceeds, alleged erroneous valuation of collateral and of borrower's ability to pay, as well as usury and bad faith claims. We have substantial experience in litigations with respect to securitization issues in state, federal, and bankruptcy courts involving prime, non-prime, and subprime assets ranging from consumer loan assets to audio-video equipment, which raised a number of significant Uniform Commercial Code (UCC) and secured lending issues. The firm has also represented clients in disputes with respect to investor suitability issues and purported unfair and deceptive business practices arising in the consumer and commercial lending arenas.

Our litigators also have considerable experience in complex securities litigation, demonstrated by the lead role we played in the recent landmark case, *Stoneridge Investment Partners, LLC* v. *Scientific-Atlanta, Inc.* 128 S. Ct. 761 (2008), in which the Supreme Court rejected the theory of "scheme liability" and held that a secondary actor cannot be liable unless it has made deceptive statements on which investors have relied.

We regularly handle SEC investigations and enforcement actions, and have represented major financial institutions in SEC investigations arising out of significant corporate governance and related party issues. We also defend financial services companies in class actions alleging securities fraud and related securities law violations.

Financial Services Preemption Litigation

We have played a prominent role in much of the most significant federal banking litigation of the past three decades. For a number of years, Arnold & Porter LLP has been actively involved in challenging, on grounds of federal preemption, state and local efforts to supervise and regulate activities of federally chartered financial institutions. The firm in recent years has developed considerable experience in representing national banks and federal savings banks in a series of cases involving preemption of state law by the National Bank Act (NBA) and the Home Owners' Loan Act (HOLA). In a series of cases, the Arnold & Porter team, including lawyers from the firm's Washington, DC, New York, and Los Angeles offices, has achieved major victories for national banks, savings and loan institutions, and credit unions threatened with overreaching state and local actions. With a growing number of states and localities seeking to control financial institutions' activities, these issues have become increasingly important to financial institutions nationwide.

Examples of the cases in which we have recently achieved federal banking law preemption victories include:

- *State Farm Bank, F.S.B.* v. *Reardon*, 539 F.3d 336 (6th Cir. 2008) (obtained declaratory and injunctive relief from enforcement of Ohio's mortgage-broker licensing laws against agents of federal savings bank)
- *Rose* v. *Chase Bank USA, N.A.*, 513 F. 3d 1032 (9th Cir. 2008), *aff'g* 396 F. Supp. 2d 1116 (C.D. Cal. 2005) (obtained dismissal of class action complaint alleging violation of state statutory disclosure requirements for access checks and unfair and deceptive practices)
- *Consumers Against Unfair Business Practices (Miller)* v. *Bank of Am., N.A. (USA)*, 170 Cal. App. 4th 980 (2009) (obtained dismissal of class action complaint alleging national bank's collection of finance charges and late fees when credit card payment date fell on weekend or holiday violated state "holiday" statutes and constituted unlawful, unfair and deceptive practices)
- *Augustine* v. *FIA Card Servs., N.A.*, 485 F. Supp. 2d (E.D. Cal. 2007), *appeal docketed* (9th Cir. No. 07-16751) (obtained dismissal of class action complaint alleging violation state unfair and deceptive practices in that national bank failed to give notice to borrower before raising credit card interest rate due to borrower default)
- *Montgomery* v. *Bank of America Corp.,* 515 F. Supp. 2d 1106 (C.D. Cal. 2007) (obtained dismissal of class action complaint alleging unfair and deceptive trade practices based upon the amount of a national bank's insufficient funds fees and the manner in which the fee amount was disclosed to customers)
- *State Farm Bank, F.S.B.* v. *Burke*, 445 F. Supp. 2d 207 (D. Conn. 2006) (obtained injunctive and declaratory relief from enforcement of state mortgage broker licensing laws against agents of a federal savings bank)
- *Silvas* v. *E*Trade Mortgage Corp.*, 421 F. Supp. 2d 1315 (S.D. Cal. 2006) (obtained dismissal of complaint alleging violations of Truth in Lending Act and state unfair and deceptive practices laws), aff'd 514 F.3d 1001 (9th Cir. 2008)

- *Bank of Am., N.A.* v. *McCann*, 444 F. Supp. 2d 1227 (N.D. Fla. 2006) (obtained injunctive relief under the visitorial powers provision of the National Bank Act preventing state court lawsuit by qui tam plaintiffs alleging violation of state escheat laws)

- *Am. Bankers Ass'n* v. *Lockyer*, 239 F. Supp. 2d 1000 (E.D. Cal. 2002) (obtained summary judgment declaring that state disclosure statute requiring minimum payment disclosures was preempted)

- *Parks* v. *MBNA America Bank, N.A., et al.*, Orange Superior Court, Case No. 04CC00598 (June 17, 2008) (obtained judgment on the pleadings for national bank in class action alleging violation of state disclosure statute), *appeal docketed* (Fourth App. Dist., Div. Three, No. G040798)

- *Bank One Del., N.A.* v. *Wilens*, 2003 WL 21703629 (C.D. Cal. July 7, 2003) (obtained injunctive relief barring state court suit alleging violations of state disclosure and unfair and deceptive practices laws)

- *Armanini* v. *Bank One, Del., N.A.*, Orange County Super. Ct., No. 03 CC 00255 (Feb. 3, 2005) (obtained summary judgment for national bank in class action alleging violation of state access check disclosure requirements and unlawful, unfair, and deceptive practices). We also recently achieved a grant of review by the New York Court of Appeals of *Spitzer* v. *Applied Card Systems*, 7 A.D.3d 104 (NY 2005), in order that we may appeal our Truth in Lending Act preemption defenses.

In addition, we have filed amicus briefs on behalf of the banking industry arguing federal banking law preemption in numerous cases, including:

- *Watters* v. *Wachovia Bank, N.A.*, 127 S. Ct. 1559 (2007) (NBA preemption)

- *The Clearing House Assn., L.L.C.* v. *Spitzer*, 510 F.3d 105 (2d Cir. 2007) (visitorial powers), *aff'g in part*, 394 F. Supp. 2d 620 (S.D.N.Y. 2005), and *Office of the Comptroller of the Currency* v. *Spitzer*, 396 F. Supp. 2d 383 (S.D.N.Y 2005), *cert. granted* (January 16, 2009 No. 08-453).

- *Pacific Capital Bank, N.A.* v. *Connecticut*, 542 F.3d 341 (2d Cir. 2008) (NBA preemption), *aff'g* 2006 WL 2331075 (D. Conn. 2006).

- *Miller* v. *Bank of Am. N.T. & S.A.*, 51 Cal. Rptr. 3d 223 (Cal. Ct. App. 2006) (NBA preemption), *review granted* (March 21, 2007 No. S149178).

- *Am. Fin. Servs. Ass'n* v. *City of Oakland*, 34 Cal. 4th 1239 (2005) (NBA and HOLA preemption)

- *Am. Bankers Assn.* v. *Gould* , 412 F.3d 1081 (9th Cir. 2005) (Fair Credit Reporting Act preemption

Financing Transactions and Capital Markets

We advise both domestic and international financial institutions on a wide variety of financing opportunities, including securities offerings, leveraged buyouts, lending activities, and debt restructuring. Our attorneys are skilled at structuring securities offerings to ensure favorable regulatory capital treatment. We represent both issuers and underwriters of hybrid capital instruments and other capital markets transactions.

Hedge Fund and Private Equity Investment in Financial Institutions

We have considerable breadth and depth of experience in counseling hedge and private equity funds and their investment advisors in working through the implications of the rules and policies that apply to both controlling and non-controlling investments in financial institutions and their holding companies, including the recent policy statements from the FDIC and Federal Reserve on private capital investments in banks and bank holding companies. Our experience includes structuring investment vehicles to make such investments and the forms in which such investments will be made, negotiating the relevant documentation, and working with the funds and the regulators in either obtaining the appropriate regulatory approvals for such investments, or in addressing any presumption of control by negotiating "custom tailored" passivity agreements or rebuttal of control agreements that may be required to ensure that such investment remain passive.

International and Foreign Banking

We actively advise foreign banks on entry into the US and the activity of their US offices, as well as regulatory requirements, including comprehensive consolidated supervision determinations, new products (in securities, asset management, derivatives, insurance, and venture capital areas), capital issuances and other expansion opportunities. We also assist US financial services firms in expanding banking activities internationally through the establishment of foreign branches, the acquisition of subsidiary banks, and the expansion of foreign investments in established and emerging markets. In addition to commercial clients, we advise foreign governments and agencies on regulatory issues involving the US. With attorneys from our international practice, we advise foreign governments with respect to their dealings with the Federal Reserve and other regulators and international organizations located in Washington, DC, as well as their commercial dealings with banks and securities firms.

Legislation and Public Policy

We also represent individual institutions and trade associations on matters relating to federal financial regulatory legislation and policy. We develop legal positions for clients on many of the major public policy issues affecting financial institutions. Working with our legislative and public policy colleagues, we monitor legislative developments that concern the financial services industry, draft legislative proposals, provide legal and technical support for institutions commenting on proposed legislation, and work closely with congressional and federal agency staffs.

Mergers, Acquisitions, and Strategic Alliances

Our firm historically has had one of the leading bank mergers and acquisitions practices in the US. Our attorneys are experienced with sophisticated merger techniques and skilled in developing related tax, antitrust, and regulatory strategies. Our work includes structuring and negotiating acquisitions of all types within the financial services industry, including cross-industry acquisitions, and strategic alliances among financial services companies and other entities. We also perform targeted due diligence to assist potential acquirors in regulatory risk assessment.

Privacy and Data Security

What financial services firms know about their customers has become a heavily regulated aspect of doing business. We have been active for two decades in representing our financial services clients on matters relating to customer privacy.

In this regard, we counsel financial institutions on the rapidly growing body of federal and state privacy laws affecting their operations, including developing privacy notices, negotiating data protection agreements with business partners, and setting up internal databases to ensure appropriate safeguards on access to, and disclosure of, personal information. We also work with clients on the privacy rules adopted pursuant to the HIPAA and on international privacy requirements, including the restrictions imposed by the Data Protection Directive of the EU. Our privacy experience includes protection of financial information, including electronic data. As a complement to this advice, we work closely with clients on the security aspects of information privacy, which involve technical considerations that are integral to any program of privacy compliance.

Regulatory and Strategic Counseling

We counsel clients on complicated issues arising under the statutes, regulations, and proposed regulations governing the financial services industry. We also counsel clients on the application of agency guidance documents and statements of policy on a wide range of issues, particularly in the areas of evolving regulatory scrutiny, in order to assist clients in identifying significant legal, supervisory, and reputational risks, and implementing systems and controls tailored to address those risks.

Based on our extensive experience, we often propose changes to agency regulations and request interpretations of existing or proposed agency rules. These efforts have led to novel legal interpretations that have enabled our clients to offer new products and services, and to expand the scope of their operations.

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ARNOLD & PORTER LLP

Tab 4: Arnold & Porter LLP's Legislative and Public Policy Practice Overview

LEGISLATIVE AND PUBLIC POLICY

Arnold & Porter LLP's legislative and public policy practice operates at the intersection of public policy and law, providing strategic advice and counsel and direct legislative and executive branch governmental affairs services on a host of issues critical to our clients' successes. Our attorneys and senior legislative advisors have served in key positions in the government and maintain strong ties with key policymakers. They bring a sophisticated understanding of the pivotal relationship between government and business to the clients they serve.

The hallmark of Arnold & Porter's legislative and public policy practice is our focus on clients with complex legal and public policy challenges. The legislative and public policy group has experienced significant growth and success over the past three years, moving up on the Legal Times Revenue Report ranking from 39th to 19th to 12th. The group currently serves as government affairs professionals for major US and international corporations. Our clients typically face a myriad of concerns in multiple venues including adverse legislative or regulatory activity and intense media scrutiny. Our seasoned legislative and public policy team achieves results because we offer clients:

- **Experience.** We have represented clients on high-profile and often precedent-setting policy matters since the founding of Arnold & Porter in 1946. Judgment. The complex "hot button" issues we tackle require deft political handling and sensitivity to the impact that policy battles have in other areas, such as litigation risk management, business reputation, the media, and the marketplace.
- **Seasoned Team.** The legislative and public policy team has extensive experience working with Capitol Hill and the administration. The group includes a former member of Congress, as well as Capitol Hill, and Administration staff. In addition, the team draws upon the substantive experience of lawyers throughout the firm.
- **Experience in Government Affairs Compliance and Oversight Investigations.** We counsel clients on the rules regarding campaign activity, lobbying law, and political contributions, so clients can fully and lawfully engage in the political process. We also represent them in investigations before congressional oversight committees.

At the Forefront of the Major Public Policy Debates of Our Time

The firm has been involved in many of the major public policy debates in Congress, including:

- Energy and climate change legislation;
- The financial bailout legislation;
- The economic stimulus legislation;
- Product liability and class action reform proposals;

- Homeland security legislation and related issues;
- Money laundering legislation;
- Medicare/Medicaid reform;
- Food and drug regulation reform;
- Prescription drug coverage;
- Pension reform proposals;
- US policy on the export of encryption technology;
- Systematic risk legislation;
- Securities reform legislation;
- National transportation policy; and
- National education policy.

We also have represented numerous clients before congressional oversight committees, investigating:

- Waste, fraud, and abuse in government contracting;
- Federal government bailout of financial institutions;
- Accounting and financial reporting scandals;
- Prescription drug pricing and promotion; and
- Securities fraud allegations.

In an environment in which clients face multiple challenges on various fronts, it is critical to be serviced by an experienced team equipped to handle all of the issues in an integrated and sophisticated fashion. The Arnold & Porter legislative and public policy team is committed to an innovative, proactive, and multidisciplinary approach to solving whatever problems, in whatever forum, a client faces.

Examples of our Legislative and Public Policy Matters:

- Represented the Olive Group, a major worldwide security contractor, in a high profile congressional investigation regarding alleged abuses occurring under contracts with the US Department of Defense.
- Represented Energy Future Holdings, the major electric utility in Texas, on issues relating to federal energy and climate change legislation.
- Represented UPS, a major international parcel carrier, in securing amendments to congressional legislation that would have imposed burdensome regulations on the client.

- Represented Finmeccanica, Italy's largest defense contractor, in negotiating US government requirements in connection with the client's acquisition of DRS Technologies, a major US defense contractor.
- Represented Reckitt Benckiser, a large international consumer products corporation, in securing legislative provisions to oppose federal regulations restricting the use of a major product of the corporation.
- Represented ArvinMeritor, a major international vehicle parts manufacturer, in securing federal legislation and funding to advance research and development of advanced hybrid engine technology for heavy duty trucks.
- Represent BP, a major oil and gas production company, on major oil and gas energy, climate change, and tax legislation.
- Represented Scientific Protein Laboratories, a major manufacturer of heparin active pharmaceutical ingredient, in a broad range of government investigations relating to the global heparin contamination crisis.
- Represented a major manufacturer in two congressional investigations relating to its atypical anti-psychotic drug product.
- Represented a major pharmaceutical company in responding to a highly complex and adversarial congressional and US Food and Drug Administration investigation relating to a marketed antibiotic product.
- Represented several student lending organizations before the US Congress and federal agencies to oppose provisions in the budget reconciliation legislation and Reauthorization of the Higher Education Act that would have major impact on the student lending industry.
- Represented the Association of Unmanned Vehicle International, the largest unmanned vehicle trade association, to achieve more rapid deployment of unmanned systems in the national air space.
- Represented a state's department of transportation in working with members of Congress to prioritize appropriations funding.
- Represented pro bono a group of US military officers to maintain their right to leave the military upon expiration of their original military service obligation. Our successful representation required the Army to respect the long-established rights of officers in today's volunteer army.
- Assisted General Dynamics in obtaining federal appropriations funding for the corporation for research, development, and procurement of equipment for the military.

Advocacy Before Congress and the Administration

On behalf of our clients, we work with congressional and administration officials to influence the enactment, defeat, or modifications of legislation affecting our clients' interests. We also appear as advocates before federal departments and agencies in connection with federal rulemaking processes. Our full range of services includes:

- Developing and implementing comprehensive legislative and political strategies;

- Drafting and analyzing legislative or regulatory proposals, as well as supporting materials;
- Advocating our clients' positions with key public officials from the legislative and public policy perspective;
- Creating or working with effective, high-profile coalitions to enhance support for a client's position;
- Identifying and educating influential groups within members' constituencies to mobilize support for our client's position;
- Preparing witnesses to testify at congressional or regulatory hearings;
- Preparing testimony, talking points, and other briefing materials;
- Working with media consultants to devise and execute a public relations campaign; and
- Daily monitoring of legislative and regulatory developments.

Congressional Oversight and Investigations

Arnold & Porter's legislative and public policy team also represents clients in congressional oversight hearings and investigations. Working with our white collar criminal defense attorneys ensures that clients with potential criminal exposure are well advised. Our ability to understand and weigh the legal, public relations, and business implications of a high-profile investigation enables us to develop responses that minimize risk to a client's litigation posture or reputation. We also provide procedural and political counsel for these inquiries.

Foreign Policy, National Security, and Other Related Issues

Rapid globalization, technological advances, and the threat of terrorism have brought national security and foreign policy concerns into the commercial sphere in an unprecedented way. In conjunction with our national security group, the legislative and public policy team represents clients -- both commercial clients and sovereign governments--in their dealings before the US Department of State, the US Department of Defense, other US security agencies, and Congress to ensure that their interests are heard when key foreign policy and national security decisions are being made.

Political Law and Government Affairs Compliance

Arnold & Porter's legislative and public policy practice provides clients with a "one-stop" approach in meeting their advocacy and legal compliance needs. In recent years, compliance with the laws that govern political activity has become even more important -- and noncompliance more costly.

Arnold & Porter has a team of lawyers that focus on the substantive laws that apply to political activity: the Federal Election Campaign Act, the Lobbying Disclosure Act, the Foreign Agents Registration Act, Congressional and Executive Branch gift rules, federal bribery and gratuity laws, government procurement restrictions, Internal Revenue Code provisions regarding political activity, and a host of similar state and local laws.

We counsel our clients to ensure that they are in full compliance with both the spirit and letter of federal and state campaign finance, lobbying, and government ethics rules.

State and Local Government Advocacy

Our team has extensive experience devising and implementing public policy strategies at the state and local level. Our plans take into account the particular legal and regulatory regimes of each jurisdiction, idiosyncrasies of the legislative or regulatory process, the key players, politics, and local practices and methods of operation. To assist in our representation, we typically work with state and local legislative, public affairs, and grassroots consultants and legal counsel who provide on-the-ground assistance. A growing part of the legislative and public policy team's business is litigation risk management: representing clients in connection with potential or threatened litigation by state Attorneys General, municipalities, and school districts.

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Tab 5: Arnold & Porter LLP Advisory, "Obama Administration Proffers Comprehensive Derivatives Bill—CFTC Urges Tighter Rules," September 2009

OBAMA ADMINISTRATION PROFFERS COMPREHENSIVE DERIVATIVES BILL—CFTC URGES TIGHTER RULES

A new phase in the battle over derivatives regulation has opened with delivery of the Obama administration's proposed legislation to Congress.[1] The Over-the-Counter Derivatives Markets Act of 2009 (Proposed Bill) is an ambitious proposal that would subject over-the-counter (OTC) derivatives and their users to comprehensive regulations, affecting banks, broker-dealers, hedge funds, industrial firms, international financial services providers, and many others. In an unexpected development that illustrates the scope of debate over the bill, US Commodity Futures Trading Commission (CFTC) Chairman Gary Gensler urged tighter regulation than that proposed by the US Department of the Treasury in a letter submitted to the leadership of the US House of Representatives and US Senate.

I. Basics of the Proposed Legislation

The Proposed Bill covers virtually all types of OTC derivatives and defines them as "swaps." It defines security-based swaps as "securities," assigns jurisdiction over them to the Securities and Exchange Commission (SEC), and repeals the exemption from regulation that they once received under the Gramm-Leach-Bliley Act. Jurisdiction over other types of swaps would fall to the CFTC.

The Proposed Bill is intended to subject swaps to comprehensive regulation. Intermediaries, markets, clearing entities, and other derivative market participants would face substantial new registration and regulation requirements. In general, while such entities would be allowed to participate in both SEC- and CFTC-regulated markets, registration with both regulators would be required in order to do so. Even banking entities, which are already subject to comprehensive prudential regulation, would enjoy no exceptions from registration obligations.

II. Centralized Clearance Requirements

As expected, the Proposed Bill would require all standardized swaps to be cleared through registered central clearing organizations or clearing agencies and provides that any swap accepted for clearing will be presumed to be standardized. The SEC and CFTC would have to issue regulations to further define the term "standardized"

1 The proposed legislation can be found at http://www.financialstability.gov/docs/regulatoryreform/titleVII.pdf. Our prior advisory discussing Treasury's preliminary outline of a potential bill, "Major Regulation Proposed for Over-the-Counter Derivatives" can be found at http://www.arnoldporter.com/resources/documents/Advisory_MajorRegulationProposedForOverTheCounterDerivatives_060909.pdf.

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Economic Recovery and the Changing Regulatory Landscape

For more information and access to Arnold & Porter's latest resources on this topic including advisories, upcoming events, publications, and the Financial Regulatory Chart, which aggregates information on US government programs, please visit: http://www.arnoldporter.com/EconomicRecovery.

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and would have the authority to designate any particular swap or class of swaps as "standardized." Central clearing would not be required if no registered clearing entity would accept the transaction for clearance, or if one of the counterparties was an entity other than a swap dealer or "major swap participant" (as discussed below), and did not meet the clearing organization's or agency's eligibility standards.

Transactions in swaps that are not accepted for clearing would have to be reported by both parties to the appropriate regulator or to a registered "swap repository," defined as an entity that collects and maintains the records of the terms and conditions of swaps entered into by third parties. Data on swap trading volumes and positions would be made publicly available from information reported to central clearing facilities, swap repositories, and regulators.

III. Exchange Trading

The proposed legislation goes beyond mandatory clearing for standardized swaps and requires swaps that are standardized be traded on an exchange. Specifically, swaps under the jurisdiction of the CFTC will have to be traded on a designated contract market or a new category of regulated exchange, called an "alternative swap execution facility." Likewise, security-based swaps will have to be effected on a registered national securities exchange or an alternative swap execution facility. However, an exception to the mandatory clearing and exchange trading requirement for standardized swaps would exist if no registered clearing organization would accept the transaction for clearance, or if one of the counterparties was an entity other than a swap dealer or major swap participant as defined by the Proposed Bill, and did not meet the relevant clearing organization's eligibility standards.

IV. Registration and Regulation of Swap Dealers and Major Swap Participants

Depending on the assets underlying the transactions, dealers in swaps and "major swap participants" would have to register with the SEC, the CFTC, or both. A "major swap participant" would be any non-dealer "who maintains a substantial net position" in outstanding swaps, "other than to create and maintain an effective hedge under generally accepted accounting principles" as defined by the SEC and CFTC. The proposed legislation treats swap dealers and major swap participants the same, leaving it up to the regulators to adopt rules that differentiate between them.

The SEC and CFTC would jointly adopt standards applicable to such entities. The agencies would have enforcement authority over the OTC derivatives market, and could establish position limits and reporting levels, business conduct standards, reporting and recordkeeping requirements, and capital requirements as they deem appropriate. Regulators would also establish margin requirements for swap transactions that are not centrally cleared. While banking entities are not excepted from the requirement to register, bank regulators would retain the authority to establish and enforce prudential standards, including capital standards and margin requirements, over the entities that they regulate. The legislation directs the SEC and CFTC to establish capital requirements for non-bank swap dealers and major swap participants, at least as strict as those established by the bank regulators, for swaps dealers and major swaps participants that are banks. The legislation also requires that the regulators set higher margin and capital standards for swaps that are not cleared by central counterparties.

V. Outlook

Due to the extraordinary breath of the proposal, we expect the coming Congressional hearings on the Proposed Bill to generate significant attention on Capitol Hill. At least one of the affected financial regulators, the CFTC, has already weighed in with comments. Shortly after the proposal was released, CFTC Chairman Gary Gensler wrote to Congress suggesting that the bill be strengthened by curtailing certain exceptions for foreign currency swaps and forward transactions. The CFTC also argues in its letter for bolstering the mandatory clearing requirement by eliminating the exception for transactions where one of the parties is not a swap dealer or major swap participant. The CFTC believes centralized clearing of all standardized trades will reduce systemic risk.

The Proposed Bill raises many other issues. For instance, it appears to provide that certain security-based swap transactions that do not involve the issuer or an underwriter would not be subject to registration under the Securities Act of 1933 (Securities Act). On the other hand, it would ban security-based swap transactions involving non-eligible contract participants unless such swaps are sold pursuant to an effective Securities Act registration statement. Users of customized derivative products may find their ability to trade affected by the exchange trading and mandatory clearing requirements. Likewise, position limits and new capital and margin requirements may impact the activities of heavy users of derivatives. However, the Proposed Bill leaves much of the work in defining the scope of the regulatory requirements to the regulators to be determined through future rulemaking.

For international transactions, the bill would have substantial implications. For example, where a non-US market allows US traders to have direct access to its electronic trading and order matching systems, it could be required to register with the CFTC. Also, foreign contracts that settle against the prices of contracts listed on US exchanges would be prohibited, unless the CFTC determined that the foreign market where the contracts are traded had implemented appropriate position limits, trade reporting standards, and information sharing arrangements, among other things. (Markets that already have received exemptions from the CFTC would be grandfathered).

Finally, the Proposed Bill's division of authority over the OTC derivatives market between the CFTC, SEC, and the bank regulators creates the potential for jurisdictional infighting, duplicative regulation, and legal uncertainty. Whether these jurisdictional issues can be effectively managed through joint rulemaking and inter-agency cooperation will be one of the many challenges faced by the regulators should the Proposed Bill pass the Congress in its current form.

We hope that you have found this advisory useful. If you have additional questions, please contact your Arnold & Porter attorney, or:

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Tab 6: Arnold & Porter LLP Advisory, "Obama Administration's Proposal to Reform Financial Regulation Will Affect Large Firms, Unregulated Markets, and Retail Products," June 2009

OBAMA ADMINISTRATION'S PROPOSAL TO REFORM FINANCIAL REGULATION WILL AFFECT LARGE FIRMS, UNREGULATED MARKETS, AND RETAIL PRODUCTS

On June 17, 2009, the US Department of the Treasury unveiled details of the Obama Administration's proposal to reform financial regulation. The proposal recommends that Congress and regulatory agencies adopt a comprehensive series of changes to overhaul the US financial regulatory system. If adopted, it would increase the role of the federal government in virtually every aspect of the financial services industry. The proposal contemplates significant changes for banks, bank holding companies, securities firms, private investment funds, insurance companies, and virtually every other provider of financial services. Among many other significant changes, it would:

- Install the Board of Governors of the Federal Reserve (Federal Reserve) as an overarching regulator for any type of financial firm that it identifies as being systemically significant, giving it authority over certain entities that historically have been subjected to little or no oversight.
- Establish procedures to resolve or support failing significant financial institutions or bank holding companies.
- Impose heightened consolidated supervisory standards, including capital, liquidity, and prudential requirements, on all large interconnected financial firms, as well as tighter capital standards on banks and holding companies, in general.
- Drastically scale back the preemption powers of federally chartered financial institutions.
- Create several new federal agencies, offices, and councils, including a new Consumer Financial Protection Agency (CFPA), dedicated to policing consumer financial products and services.
- Regulate the markets for over-the-counter (OTC) derivatives and impose requirements on the securitization of debt.
- Require Securities and Exchange Commission (SEC) registration of advisers to hedge funds, venture capital funds, and other private investment funds.
- Require tighter regulation of money market mutual funds and require a study and proposal regarding whether money market mutual funds should continue to maintain a stable net asset value of US$1 per share.

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- Potentially ban mandatory arbitration clauses in retail financial services contracts.

I. FEDERAL RESERVE OVERSIGHT OF SYSTEMICALLY SIGNIFICANT FINANCIAL FIRMS

Under the proposal, the Federal Reserve would be charged with identifying and regulating any financial firm whose failure could pose a threat to financial stability due to its size, leverage, and interconnectedness. Such firms are referred to in the proposal as "Tier 1 Financial Holding Companies" (Tier 1 FHCs). Not only bank holding companies, but all types of financial entities, including hedge funds, insurance companies, and securities firms, could be deemed Tier 1 FHCs and become subject to regulation by the Federal Reserve.[1]

Moreover, the Federal Reserve would take more responsibility for the oversight of those payment, clearing, and settlement systems that it deems systemically important (although market regulators such as the US Commodity Futures Trading Commission (CFTC) and SEC would remain the primary regulators of such systems). In fact, it would be authorized to provide such systemically significant payment, clearing, and settlement systems with access to Reserve Bank accounts, financial services and the discount window. Perhaps even more importantly, the legislation would also provide the Federal Reserve with jurisdiction over the settlement *activities* of financial firms, and allow it to set reporting and conduct standards with respect to such activities.

To assist with the identification of Tier 1 FHCs, and to coordinate financial regulatory policy, in general, the Administration would create a "Financial Services Oversight Council" (FSOC) in place of the President's Working Group on Financial Markets. The Council would include the heads of the primary federal financial regulators,[2] be chaired by the Secretary of the Treasury, and have a full-time "permanent secretariat" of Treasury Department staff. In order to provide regulators with data as to entities that are not presently supervised at the federal level, advisers to hedge funds and other private investment companies would be required to register with the SEC, and a new Office of National Insurance (ONI) would be established within Treasury. The Council could also require reports from any US financial firm. Finally, the Federal Reserve would have authority to examine and require reports from financial firms that met certain unspecified size thresholds in order to determine if they should be deemed Tier 1 FHCs.

OVERSIGHT OF TIER 1 FHCS AND BANK HOLDING COMPANIES

Under the supervision of the Federal Reserve, Tier 1 FHCs would be subject to supervision on a consolidated basis extending to parent companies and through all subsidiaries, regulated and unregulated, US and foreign. They would also be subject to enhanced capital, liquidity, and risk management standards. Moreover, a Tier 1 FHC would become subject to the restrictions on nonfinancial activities imposed by the Bank Holding Company Act, even if it did not control an insured depository institution (such companies would be given five years to comply). Finally, Tier 1 FHCs would have to adopt plans for their rapid resolution in the event of severe financial distress.

As to banks and bank holding companies, the Administration's proposal contemplates enhancing current capitalization standards. Notably, it calls for all FHCs to meet capital and management requirements on a consolidated basis, not just at a depository institution level. Further, it calls for regulations to strengthen the restrictions that are in place between banks and their affiliates through Sections 23A and 23B of the Federal Reserve Act.

INSTITUTION OF SYSTEMS TO RESOLVE OR SUPPORT FAILING BHCS, INCLUDING TIER 1 FHCS

The Administration also proposes a mechanism to wind down or "stabilize" failing BHCs, including Tier 1 FHCs,

1 Since the Federal Reserve would become solely responsible for the consolidated supervision and oversight of such firms, the proposal would eliminate the ability of investment bank holding companies to seek consolidated supervision by the SEC under its Supervised Investment Bank Holding Company Program.

2 I.e., the Federal Reserve, SEC, CFTC, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency (FHFA), the to-be-created National Bank Supervisor (NBS), and Consumer Financial Protection Agency (CFPA).

where a failure might threaten the financial system. Under the proposal, Treasury should have the power to decide whether to appoint a receiver or conservator, which would be the FDIC (or SEC if the firm were a broker-dealer), and/or to support a failing firm with loans, guarantees, equity investments, or asset purchases. In order to improve accountability in such situations, the Administration intends to propose legislation to require prior written approval of the Secretary of the Treasury for any emergency extensions of credit by the Federal Reserve.

Treasury could only employ the special resolution regime after consulting with the President and obtaining approval from two-thirds of the members of the Federal Reserve and (depending on the firm's largest subsidiary) either two-thirds of the FDIC Board or two-thirds of the SEC commissioners. The newly-created ONI would be consulted if the failing firm included an insurance company.

II. STREAMLINED FEDERAL BANKING REGULATION

As expected, the Reform Proposal calls for the elimination of the Office of Thrift Supervision (OTS). Surprisingly, however, it also calls for elimination of the thrift charter itself. Supervision of all federally chartered depository institutions and federal branches, and agencies of foreign banks would fall under a new agency within Treasury: the National Bank Supervisor (NBS). It is not clear from the proposal whether the new NBS would be a continuation of the Office of the Comptroller of the Currency (OCC) or would be an entirely new agency with a new staff and leadership. While the OTS would be gone, its relatively permissive interstate branching rules would be extended to state and national banks. There would be no changes in the role of the Federal Reserve, FDIC, or the National Credit Union Administration in their regulation of state banks and credit unions.

Moreover, companies controlling industrial loan companies, trust companies, credit card banks, and "nonbank" banks would be required to become BHCs and would be subject to regulation by the Federal Reserve. Such companies would be given five years to conform to BHC activity restrictions.

At the same time, the proposal calls for the Financial Accounting Standards Board, the International Accounting Standards Board, and SEC to "review accounting standards to determine how financial firms should be required to employ more forward-looking loan loss provisioning practices that incorporate a broader range of available credit information" and otherwise review potential revisions to fair value accounting rules.

III. CONSUMER FINANCIAL PROTECTION

The proposed new CFPA would be dedicated to policing consumer financial products and services. It would have authority to promulgate and interpret rules, as well as enforce current federal consumer financial services and fair lending statutes within its jurisdiction, which is proposed to extend to bank affiliates not currently supervised by a federal regulator.

The proposal would significantly scale back the preemption powers of federally chartered financial institutions. States would have the ability to adopt laws more stringent than the federal laws administered by the CFPA. Additionally, the proposal would provide the states examination and enforcement authority over federally chartered institutions with respect to state and federal consumer protection laws. The expressed intent of these proposals is to create a level playing field between state and federally chartered institutions. This proposed expanded authority of the states, however, if enacted as proposed, may undermine the ability to provide uniform financial products and services on a multistate basis, reducing the attractiveness of a federal banking charter.

The CFPA would exercise a broad range of consumer protection powers. For example, it could:

- Oblige providers of financial products and intermediaries to ensure that disclosures are "reasonable" and not just compliant (e.g., disclosures that identify the most significant risks of a product, as opposed to only listing risks).
- Set standards for relatively simple, "plain vanilla" products, and require providers and intermediaries to offer them along with other products.

- Enforce fair lending and other laws to ensure that underserved consumers have access to financial services.

The Federal Trade Commission would retain backup authority for statutes over which it has jurisdiction (such as in matters concerning the sale of services like advance fee loans, credit repair, and debt negotiation). It would also be permitted to obtain civil penalties and allowed to conduct rulemakings dealing with unfair and deceptive practices on an accelerated basis.

IV. SECURITIES AND SECURITIES MARKET REFORMS

The Administration advances several other proposals that impose more stringent regulation on securities markets, intermediaries, and issuers. These include, among other things:

- *SEC registration for advisers to hedge funds, private equity funds, venture capital funds, and other private investment pools.* Registration under the Investment Advisers Act will subject such advisers and the funds that they manage to a host of recordkeeping and reporting requirements, as well as to potential regulation by the Federal Reserve as Tier 1 FHCs.
- *Regulation of OTC derivative markets, including those for credit default swaps.* The proposal suggests legislation to reverse the exemption from regulation provided for such instruments by the Commodity Futures Modernization Act of 2000. New laws would mandate that standardized OTC derivatives, including credit default swaps, be executed on regulated markets and cleared through regulated central counterparties with "robust" margin requirements that are subject to prudential supervision. CFTC and SEC would be authorized to require records and reports as to trading in such instruments, and CFTC allowed to set position limits with respect to those that have a significant price discovery function.[3]
- *Bank rules to require loan originators and securitization sponsors to retain five percent of the credit risk of securitized loans and other exposures.* Requiring lenders and sponsors to retain exposure to securitized debt is meant to yield more careful review of the performance of loans underlying asset-backed securities.
- *Harmonization of futures and securities regulation.* SEC and CFTC are to jointly recommend legislation to harmonize the regulation of futures and securities. If the two agencies cannot agree, the task will fall to the new FSOC.
- *Subjecting broker-dealers who give investment advice to the same fiduciary duties as registered investment advisers.*
- *Legislation authorizing SEC to require greater independence for compensation committees.* The proposal also supports requiring issuers to implement non-binding shareholder votes on executive compensation and the authorization of SEC "say on pay" rules.

V. FUTURE ACTIONS AND UNDERTAKINGS

While acknowledging their importance to the financial system, the Administration's proposal essentially pledges consideration and later action on a number of issues. Thus it:

- Describes future options for Fannie Mae and Freddie Mac, ranging from dissolution to continued operation, and pledges to report on alternatives at the time of the President's 2011 Budget.
- Expresses support for enhanced disclosures by credit rating agencies, less regulatory reliance on ratings, and further SEC efforts to improve their regulation.
- Outlines the Administration's intent to coordinate with international authorities to promote reforms that complement US initiatives, such as a stronger Basel II capital framework, enhanced oversight of OTC derivative markets, better fair value accounting standards, and improved regulation to address systemic risk.

3 Reforms proposed for the OTC derivative markets are more fully described in our prior advisory: http://www.arnoldporter.com/resources/documents/Advisory_MajorRegulationProposedForOverTheCounterDerivatives_060909.pdf)

We hope that you have found this advisory useful. We will be following the proposal closely during the coming months as the Administration seeks to implement it through regulation and legislation. If you have questions about the proposal or its implementation, please contact your Arnold & Porter attorney, or:

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Tab 7: US House of Representatives Committee on Financial Services, "Committee Completes Work on New Rules to Govern America's Financial System," December 3, 2009

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For Immediate Release: December 3, 2009

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Committee Completes Work on New Rules to Govern America's Financial System

House will vote on reform package next week

Washington, DC - Yesterday, the House Financial Services Committee completed its work on a comprehensive set of reforms that responds to the recent economic crisis by modernizing America's financial regulations. The Wall Street Reform and Consumer Protection Act (H.R. 4173), which will be considered on the House floor next week, incorporates nine major pieces of legislation approved by the Committee to address the myriad causes – from predatory lending to unregulated derivatives – that led to last year's meltdown.

The Wall Street Reform and Consumer Protection Act includes the following provisions:

- **Consumer Protections**: Creates the Consumer Financial Protection Agency (CFPA), a new, independent federal agency solely devoted to protecting Americans from unfair and abusive financial products and services.

- **Financial Stability Council**: Creates an inter-agency oversight council that will identify and regulate financial firms that are so large, interconnected, or risky that their collapse would put the entire financial system at risk. These systemically risky firms will be subject to heightened oversight, standards, and regulation.

- **Dissolution Authority and Ending "Too Big to Fail"**: Establishes an orderly process for dismantling large, failing financial institutions like AIG or Lehman Brothers in a way that ends bailouts, protects taxpayers, and prevents contagion to the rest of the financial system.

- **Executive Compensation**: Gives shareholders a "say on pay" – an advisory vote on pay practices including executive compensation and golden parachutes. It also enables regulators to ban inappropriate or imprudently risky compensation practices, and it requires financial firms to disclose any compensation structures that include incentive-based elements.

- **Investor Protections**: Strengthens the SEC's powers so that it can better protect investors and regulate the nation's securities markets. It responds to the failures to detect the Madoff and Stanford Financial frauds by ordering a study of the entire securities industry that will identify needed reforms and force the SEC and other entities to further improve investor protection.

- **Regulation of Derivatives**: Regulates, for the first time ever, the over-the-counter (OTC) derivatives marketplace. Under the bill, all standardized swap transactions between dealers and "major swap participants" would have to be cleared and traded on an exchange or electronic platform. The bill defines a major swap participant as anyone that maintains a substantial net position in swaps, exclusive of hedging for commercial risk, or whose positions create such significant exposure to others that it requires monitoring.

- **Mortgage Reform and Anti-Predatory Lending**: Would incorporate the tough mortgage reform and anti-predatory lending bill the House passed earlier this year. The legislation outlaws many of the egregious industry practices that marked the subprime lending boom, and it would ensure that mortgage lenders make loans that benefit the consumer. It would establish a simple standard for all home loans: institutions must ensure that borrowers can repay the loans they are sold.

- **Reform of Credit Rating Agencies**: Addresses the role that credit rating agencies played in the economic crisis, and takes strong steps to reduce conflicts of interest, reduce market reliance on credit rating agencies, and impose a liability standard on the agencies.

- **Hedge Fund, Private Equity and Private Pools of Capital Registration**: Fills a regulatory hole that allows hedge funds and their advisors to escape any and all regulation. This bill requires almost all advisers to private pools of capital to register with the SEC, and they will be subject to systemic risk regulation by the Financial Stability regulator.

- **Office of Insurance**: Creates a Federal Insurance Office that will monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis and undermine the entire financial system.

###

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Click here to write to your Representative about issues relating to the Financial Services Committee.

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Tab 8: US House of Representatives Committee on Financial Services, "The Wall Street Reform and Consumer Protection Act," December 2009

The Wall Street Reform and Consumer Protection Act

The House Financial Services Committee has responded to the nation's financial crisis by crafting a comprehensive set of measures that will modernize America's financial regulations and hold Wall Street accountable. Once signed into law, this package of reforms will work together to address the myriad causes – from predatory lending to unregulated derivatives – that led to last year's meltdown. The Wall Street Reform and Consumer Protection Act includes the following major provisions:

Consumer Protections: Creates the Consumer Financial Protection Agency (CFPA), a new, independent federal agency solely devoted to protecting Americans from unfair and abusive financial products and services.

Financial Stability Council: Creates an inter-agency oversight council that will identify and regulate financial firms that are so large, interconnected, or risky that their collapse would put the entire financial system at risk. These systemically risky firms will be subject to heightened oversight, standards, and regulation.

Dissolution Authority and Ending "Too Big to Fail": Establishes an orderly process for dismantling large, failing financial institutions like AIG or Lehman Brothers in a way that ends bailouts, protects taxpayers, and prevents contagion to the rest of the financial system.

Executive Compensation: Gives shareholders a "say on pay" – an advisory vote on pay practices including executive compensation and golden parachutes. It also enables regulators to ban inappropriate or imprudently risky compensation practices, and it requires financial firms to disclose any compensation structures that include incentive-based elements.

Investor Protections: Strengthens the SEC's powers so that it can better protect investors and regulate the nation's securities markets. It responds to the failures to detect the Madoff and Stanford Financial frauds by ordering a study of the entire securities industry that will identify needed reforms and force the SEC and other entities to further improve investor protection.

Regulation of Derivatives: Regulates, for the first time ever, the over-the-counter (OTC) derivatives marketplace. Under the bill, all standardized swap transactions between dealers and "major swap participants" would have to be cleared and traded on an exchange or electronic platform. The bill defines a major swap participant as anyone that maintains a substantial net position in swaps, exclusive of hedging for commercial risk, or whose positions create such significant exposure to others that it requires monitoring.

Mortgage Reform and Anti-Predatory Lending: Would incorporate the tough mortgage reform and anti-predatory lending bill the House passed earlier this year. The legislation outlaws many of the egregious industry practices that marked the subprime lending boom, and it would ensure that mortgage lenders make loans that benefit the consumer. It would establish a simple standard for all home loans: institutions must ensure that borrowers can repay the loans they are sold.

Reform of Credit Rating Agencies: Addresses the role that credit rating agencies played in the economic crisis, and takes strong steps to reduce conflicts of interest, reduce market reliance on credit rating agencies, and impose a liability standard on the agencies.

Hedge Fund, Private Equity and Private Pools of Capital Registration: Fills a regulatory hole that allows hedge funds and their advisors to escape any and all regulation. This bill requires almost all advisers to private pools of capital to register with the SEC, and they will be subject to systemic risk regulation by the Financial Stability regulator.

Office of Insurance: Creates a Federal Insurance Office that will monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis and undermine the entire financial system.

Financial Services Committee Debate Information

Total Financial Reform markup time: **Over 50 hours of debate**

Amendments Totals-
120 Republican Amendments Considered
46 Roll Call Votes on Republican Amendments
51 Republican Amendments Accepted

134 Democratic Amendments Considered
11 Roll Call Votes on Democratic Amendments
111 Democratic Amendments Accepted

24 Bipartisan Amendments Considered
3 Roll Call Votes on Bipartisan Amendments
21 Bipartisan Amendments Accepted

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COMMITMENT | EXCELLENCE | INNOVATION

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Tab 9: US House of Representatives Committee on Financial Services, "Highlights of H.R. 4173, The Wall Street Accountability and Consumer Protection Act," December 2009

HIGHLIGHTS OF H.R. 4173, THE WALL STREET ACCOUNTABILITY AND CONSUMER PROTECTION ACT

INCREASES CONSUMER PROTECTIONS

- The bill will create the Consumer Financial Protection Agency (CFPA), a new federal agency solely devoted to protecting Americans from unfair and abusive financial products and services. Last year's crisis demonstrated that deceptive products – such as predatory mortgages and hidden credit card fees – can not only damage the livelihoods of American families, they can destabilize the entire economy.

- The CFPA will act as an independent watchdog and play a key role in preventing another economic meltdown. Just like the FDA does for medical safety, it will set basic safety standards on financial products and prevent big banks from making a quick buck at the expense of hardworking families.

- The CFPA will have the power to ban deceptive industry tactics such as teaser rates that are used to lure in customers and make huge profits. It will make sure that contracts for credit cards and mortgages are fair and comprehensible. Big banks and credit card companies will no longer be able to take advantage of the "fine print" to deceive consumers.

- The CFPA will keep watch over a number of financial industries, such as payday lenders and mortgage originators, which to date have escaped oversight.

PROTECTS FUTURE HOMEOWNERS

- To help rebuild the American economy, the House is taking action to outlaw many of the egregious industry actions that fueled the subprime lending boom and led to the nation's highest foreclosure rate in decades.

- H.R. 4173 includes comprehensive mortgage reform and anti-predatory lending measures that will outlaw the kinds of irresponsible and abusive loan practices that played a key role in the current financial meltdown. The House passed these measures (H.R. 1728) in May by an overwhelming vote of 300-114.

- To restore the integrity of mortgage lending industry, this bill will make sure that the industry follows basic principles of sound lending, responsibility, and consumer protection, ensuring that:

    - borrowers can repay the loans they are sold, and irresponsible borrowers can no longer lie their way into loans and take on too much debt.

- mortgage lenders make loans that benefit the consumer and are prohibited from steering borrowers into higher cost loans;
- the secondary mortgage market, for the first time ever, is responsible for complying with these common sense standards when they buy loans and turn them into securities

REINS IN IRRESPONSIBLE COMPENSATION PRACTICES

- H.R. 4173 addresses perverse pay practices that encourage executives to take excessive risk at the expense of their companies, shareholders, employees, and ultimately the American taxpayer – risks that contributed to the recent financial collapse.

- For the first time ever, shareholders of public companies will have an annual, non-binding "say on pay" vote on compensation packages and golden parachutes for top executives.

- The bill also requires financial firms with at least $1 billion in assets to disclose to federal regulators any incentive-based compensation structures. Federal regulators will then be authorized to ban any inappropriate or risky compensation practices that pose a threat to the financial system and to the broader economy.

- The legislation comes in response to a broad consensus of leading finance experts, including Paul Volcker and the Group of 30, who believe that compensation structures were a factor contributing to last year's financial crisis.

ENDS TAXPAYER BAILOUTS AND "TOO BIG TO FAIL"

- H.R. 4173 will once and for all put end to "too big to fail" financial firms and ensure that taxpayers are never again left on the hook for Wall Street's reckless decisions.

- The bill creates an inter-agency oversight council that will identify financial companies that are so large, interconnected, or risky that their collapse would put the entire economy at risk. These systemically risky firms will be subject to heightened oversight, standards, and regulation.

- The bill establishes an orderly process for shutting down large, failing financial firms like AIG or Lehman Brothers in a way that ends taxpayer-funded bailouts and minimizes the impact on the financial system.

- If a large institution collapses, the bill holds Wall Street - not taxpayers - accountable. Any costs associated with dismantling a failed firm will be paid first from the company's assets at the expense of shareholders and creditors. Any additional costs will then be covered by a "dissolution fund" pre-funded by large financial companies.

SAFEGUARDS INVESTORS

- Recent events – such as the massive $65 billion Madoff Ponzi scheme and the $8 billion Stanford Financial investment fraud – highlight the need for comprehensive reforms of a broken regulatory system that has failed far too many investors.

- To better safeguard investors in the future, the bill will enhance SEC's enforcement powers and funding by doubling its authorized funding over five years. This will enable the SEC to obtain the tools needed to better protect investors and police today's markets.

- The bill will create a whistleblower bounty program with incentives to identify wrongdoing in our securities markets and reward individuals whose tips lead to successful enforcement actions. With a bounty program, we will effectively have more cops on the beat in our securities markets.

- The failures to detect the Madoff and Stanford Financial frauds demonstrate deep deficiencies in our existing securities regulatory structure. The bill calls for an independent, comprehensive study of the entire securities industry to identify reforms and force the SEC and other entities to improve investor protection.

- The Madoff fraud also revealed that the Public Company Accounting Oversight Board lacked the powers it needed to examine the auditors of broker-dealers. In addition, it exposed faults in the Securities Investor Protection Act, the law that returns money to the customers of insolvent fraudulent broker-dealers. The bill closes these loopholes and fixes these shortcomings.

- The bill fills a regulatory hole that allows hedge funds and their advisors to escape any and all regulation. Now, almost all advisers to private pools of capital will be required to register with the SEC.

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Tab 10: US House of Representatives Committee on Financial Services, "Wall Street Reform & Consumer Protection," December 2009

WALL STREET REFORM & CONSUMER PROTECTION

THE MELTDOWN

For eight years, President Bush and his Republican allies ignored growing risks in the financial markets as Wall Street and big banks exploited loopholes and harmed America's families and small businesses. Their failure to regulate financial markets and control these risks left Wall Street and the big banks to gamble with our money, which compromised our future, our savings, and the American Dream. We know what happened: the worst financial crisis since the Great Depression.

TOUGH CHOICES

Over the past year, this Congress and President Obama have made the tough choices and taken effective steps to bring our economy back from the brink of disaster.

RECOVERY BEGINS

Wall Street reform is the next critical step to create jobs and grow the economy. As we rebuild our economy, we must put in place common-sense rules to ensure big banks and Wall Street can't jeopardize our recovery and hurt hard-working families and small businesses once again. Wall Street may be bouncing back, but we know from experience that left to their own devices they're not going to police themselves.

THE SOLUTION

Common sense reforms that hold Wall Street and the big banks accountable will:

- End bailouts by helping ensure taxpayers are never again on the hook for Wall Street's risky behavior and bad bets
- Protect families' retirement funds, college savings, homes and businesses' financial futures from unnecessary risk by Wall Street lenders and speculators and high-paid corporate executives
- Protect consumers from predatory lending abuses, fine print, and industry gimmicks
- Finally bring transparency and accountability to a financial system that has run amok out

OFFICE OF SPEAKER NANCY PELOSI
DECEMBER 8, 2009

THE FINANCIAL CRISIS: FACTS AT A GLANCE

The worst financial crisis since the Great Depression had its roots in a decade of failure to properly regulate our financial system, acknowledge and address obvious and growing problems and to invest in growing our economy. Irresponsible lending and complex derivatives transactions led to a mortgage meltdown that sent the nation into recession in December 2007. The financial collapse happened in the fall of 2008 with the bankruptcy of Lehman Brothers, the implosion of AIG and the subprime mortgage crisis. By early November 2008, a broad U.S. stock index—the S&P 500—was down 45% from its 2007 high.

$14,000,000,000,000 LOSS IN NET WORTH SINCE 2007

American families have paid a huge price. American households' net worth fell more than $14 trillion (20%) from 2007 to the middle of this year, with the vast majority (78%) of that drop in 2008—due to declining home values and plunging values of stock held by Americans.

22% DECLINE IN RETIREMENT ASSETS

Total retirement assets, Americans' second-largest household asset behind their homes, dropped by 22%, from $10.3 trillion in 2006 to $8 trillion in mid-2008.

2,200,000 HOMES IN FORECLOSURE JUST THIS YEAR

Subprime and predatory home loans, in which mortgage brokers lured families with low, teaser interest rates that later skyrocketed to unaffordable levels, hidden fees and charges, and incomprehensible terms and conditions that brought on the housing crisis and undermined the financial system.

- By September 2008, average housing prices had declined by over 20% from 2006.
- During 2007, lenders began foreclosure proceedings on nearly 1.3 million properties, increasing to 2.3 million in 2008, and 2.2 million homes have gone into foreclosure already in 2009.
- More than 60% of subprime loans went to people who could have qualified for lower costs loans.
- Total home equity in the United States, valued at $13 trillion in 2006 dropped to $8.8 trillion by mid-2008.
- Nearly one in four U.S. borrowers currently owes more on their mortgage than their home is worth.

12 MILLION AMERICANS RELYING ON PAYDAY LOANS

High-cost Payday Loans are preying on nearly 12 million Americans. They pay a chunk of interest each pay day, costing them nearly $5 billion per year along with other predatory lending. These loans can ultimately carry annual interest rates of 400% or more, with the typical borrower paying about $500 in interest for a $300 loan, and still owing the principal.

$65,000,000,000 PONZI SCHEME MISSED BY THE SEC

Financier Bernie Madoff was allowed to defraud investors out of as much as $65 billion in the largest Ponzi scheme in history. The Securities and Exchange Commission (SEC) missed red flags that could have put a stop to his asset management business.

$33,000,000,000 IN BONUSES FOR EXECUTIVES IN 9 BANKS

Nearly $33 billion in executive bonuses were handed out by the nation's nine largest banks last year—even as they ran up more than $81 billion in losses and accepted tens of billions of dollars in emergency federal aid. Nearly 4,800 executives and other employees at these firms were each awarded at least $1 million.

WHAT IS IN THE REFORM BILL?

A NEW CONSUMER FINANCIAL PROTECTION AGENCY TO PROTECT FAMILIES AND SMALL BUSINESSES

Ensure that bank loans, mortgages, credit cards are fair, affordable, understandable, and transparent. We have tough rules that keep companies from selling us faulty toasters that burn down our houses, but there is currently no agency that has as its sole mission oversight of potentially harmful financial products sold to consumers. This critical enforcement is necessary to:

- ensure that consumers get information that is clear and concise from banks, mortgage servicers, and credit card companies;
- prevent the financial industry from offering predatory mortgage loans to people who can't afford repayment that marked the subprime lending era; and
- put in place common sense regulations to stop abuses by the financial industry, such as payday lending and exorbitant overdraft fees.

END "TOO BIG TO FAIL" FINANCIAL FIRMS

- **Put an end to "too big to fail" financial firms,** providing the government with the tools – funded by big banks and financial firms and NOT taxpayers— it needs to manage financial crises so we are not forced to choose between bailouts and financial collapse. This includes the ability to preemptively dismantle big banks whose risky and irresponsible behavior could bring down the entire economy, as well as an orderly process to wind down failing firms**.**

END TAXPAYER-FUNDED BAILOUTS

- Help **ensure American taxpayers are never again on the hook for bailing them out** by requiring big banks and other financial institutions (with $50 billion in assets) to foot the bill for any bailouts in the future. These institutions would pay assessments based on a company's potential risk to the whole financial system if they were to fail.
- Require that all financial firms that pose risk to the financial system—not just banks—are subject to strong - supervision and regulation, including stronger capital standards and leverage rules
- Increase transparency at the Federal Reserve, which has played an enormous role in shoring up big banks and other financial institutions in this crisis, subjecting it to scrutiny by Congress' Government Accountability Office with audits of the Fed's lending programs.

MORTGAGE REFORM AND ANTI-PREDATORY LENDING

- Stop predatory and irresponsible mortgage loan practices including prepayment penalties, deceptive mortgage documentation, and making extra profits for steering borrowers to higher cost loans that played a major role in the current financial meltdown. Help ensure that the mortgage industry follows basic principles of sound lending and consumer protection.

TOUGH NEW RULES ON RISKIEST FINANCIAL PRACTICES

- Strengthen enforcement by the Securities and Exchange Commission to better protect investors and prevent future Bernie Madoff Ponzi schemes;
- Rules to curtail excess speculation in derivatives and growing use of unregulated credit default swaps that devastated AIG and Bear Stearns;
- More transparency and tougher regulation of hedge funds, private equity firms and credit rating agencies, whose seal of approval gave way to excessively risky practices that led to a financial collapse; and
- Require investment advisors to act for the sole benefit of their client under the law, exercising the highest standard of care.

'SAY ON PAY'/ADDRESSING EGREGIOUS EXECUTIVE COMPENSATION

Puts an end to compensation practices that encourage executives to take excessive risk at the expense of their companies, shareholders, employees, and ultimately the American taxpayer. It provides shareholders of public companies with an annual, non-binding vote on executive compensation and golden parachutes for the top five executives:

- require independent directors on the compensation committees of public companies; and
- authorize the SEC to restrict or prohibit "inappropriate or imprudently risky compensation practices" at large financial firms (with at least $1 billion in assets).

EARLIER ACTION IN THIS CONGRESS

The New Direction Congress has been working to protect the rights of America's consumers:

CREDIT CARDHOLDERS' BILL OF RIGHTS, providing tough new protections for consumers—including banning unfair rate increases, abusive fees, and penalties—and strengthening enforcement. *(Signed into Law)*

BIPARTISAN FINANCIAL CRISIS INQUIRY COMMISSION, investigating the causes of the worst financial crisis since the Great Depression and produce detailed and clear-eyed analysis of what went wrong. The Commission will report by the end of 2010on those in the financial industry who took irresponsible risks, and help inform Congress as we move forward with further common sense reforms to prevent a future crisis. *(Signed into Law)*

FRAUD ENFORCEMENT AND RECOVERY ACT, providing more tools to prosecute mortgage scams and corporate fraud that contributed to the financial crisis, and protecting taxpayer funds by giving the Justice Department more tools to fight fraud in the use of Troubled Asset Relief Program and Recovery Act funds. *(Signed into Law)*

EXECUTIVE COMPENSATION LIMITS (in the American Recovery and Reinvestment Act), imposing new limits on compensation for top executives at financial institutions and other corporations that receive funds through the TARP, including limiting bonuses for executives to one-third of their annual pay and prohibiting cash bonuses, for example. *(Signed into Law; no Republican supported this measure)*

BIG BANKS & THEIR ALLIES FIGHT TO STOP REFORMS

Big banks and Wall Street firms, and their special interest Washington lobbyists, are fighting tooth and nail to stop these financial regulation reforms, including our efforts to protect individuals by creating the Consumer Financial Protection Agency. They are making false claims and using scare tactics to keep making billions of dollars and raking in huge bonuses from the sale of deceptive financial products that drive million of working people into financial trouble or bankruptcy. After taking billions of our tax dollars to stabilize their finances, the big banks are now spending millions to lobby against reforms that would protect us from abuse in the future.

CONGRESSIONAL REPUBLICANS ARE SIDING WITH THE BIG BANKS AND FINANCIAL INDUSTRY AGAINST THESE REFORMS, AFTER:

- **Opposing investments for Cracking Down on Runaway Financial Excesses and Rebuilding Regulatory Protections** for homeowners, investors and consumers by federal agencies such as the Securities and Exchange Commission, the Federal Trade Commission, and Consumer Product Safety Commission. *(H.R. 3170; Passed by House 219-208, with 98 percent of Republicans voting no)*
- **Voting to Delay Credit Card Reforms,** calling instead for the Federal Reserve merely to submit a study to Congress on speeding up consumer-friendly credit card reforms to (from February to now). *(H.R. 3639, Bill passed House 331-92; 96 percent of Republicans voting to delay)*
- **Opposing Limits on Executive Compensation** for top executives at financial institutions and other corporations that receive funds through the TARP. *(H.R. 1; no Republicans supported the bill)*

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Tab 11: US House of Representatives Committee on Financial Services, "Wall Street Reform and Consumer Protection Act: Myths vs. Facts"

Wall Street Reform and Consumer Protection Act:

Myths vs. Facts

MYTH: The bill will put in place permanent bailouts -- encouraging risky behavior by financial institutions which assume the government will come to their rescue.

FACT: Completely untrue. Under this bill, the days of taxpayer-funded bailouts are over. The bill establishes a process to dissolve failing large financial institutions in a way that does not wreakhavoc on the whole economy; but this is no bailout. These financial institutions will be allowed to fail, but in a way that protects the economy. Under this authority, as a last resort, federal regulators will shut down these institutions that pose a risk to the whole economy. They will fire the managers, fire the executives, wipe out shareholders, sell off the assets, but protect our financial system and taxpayers from collateral damage. For a market to function, those who invest and lend in that market must know that their money is actually at risk. Institutions and investors must be responsible for their decisions.

Any costs incurred in unwinding these financial institutions will be borne by Wall Street firms and the big banks—not taxpayers. Dissolution will be paid for first by shareholders and creditors, by any remaining assets of the failed company and then through an industry-funded effort. The bill requires big banks and other financial institutions (with $50 billion in assets) to foot the bill for any future dissolutions of individual companies. These institutions would pay assessments based on a company's potential risk to the whole financial system if they were to fail.

This bill institutes preventive medicine by making the financial marketplace more accountable and transparent, long before we get to the point of a rescue. We strengthen supervision of large and risky financial institutions with stronger capital standards and rules against excessive and overly risky leverage.

MYTH: This bill adds unnecessary government bureaucracy with a new Consumer Financial Protection Agency (CFPA) that duplicates the work of existing agencies and increases regulatory burdens on businesses.

FACT:The new agency will consolidate and streamline enforcement of roughly 20 laws currently overseen by seven different agencies. The functions would not be duplicated; rather, they would be streamlined into a single agency, thereby reducing regulatory burden and expense, not increasing it – with the added benefit of more effective consumer protection.

This new agency is necessary as existing regulators failed to stop abusive lending practices before these practices harmed millions of consumers and ultimately the entire economy. Right now, consumer protection is a minor and sometimes ignored responsibility for a number of agencies but not top priority for any one of them. Agencies have ignored their consumer protection mandates in the past, and former Federal Reserve Chairman Alan Greenspan never implemented a law passed in 1994 to regulate subprime lending. American consumers deserve much better than this. The CFPA will clean up this mess and make consumer protection its sole priority.

MYTH: This bill will assert more government control over financial markets.

FACT: To prevent risky financial dealings by Wall Street and the big banks from decimating the savings and homes of American families and from freezing access to credit for American's small businesses, this bill reins in Wall Street and strengthens accountability in Washington. Putting in place these kinds of common sense rules of the road will improve transparency, foster competition, and strengthen the health of the marketplace. The central objective of reform is to establish a safer, more stable financial system that can deliver the benefits of financial innovation even as it guards against the dangers of excessive risk. We must ensure that our financial system creates opportunity and long-term wealth while reducing risk.

MYTH: The bill increases the deficit and increases taxes.

FACT: The net cost of the bill is <u>fully paid for</u> from the TARP. The TARP was set up to save the financial system from collapse and the cost of this legislation to prevent a future collapse is a necessary cost in that effort. Most of the costs associated with these reforms are paid for by the financial industry through fees and assessments—on large banks and non-regulated financial companies such as payday lenders and check cashing operations, and not on local community banks or credit unions.

This is a small price to pay to avert another financial disaster, and these reforms will help spur our economy and thereby reduce the federal deficit through restored confidence that our financial institutions are sound— all while we better protect consumer and investors.

MYTH: We should just let these large institutions go through bankruptcy, instead of getting the government involved.

FACT: Bankruptcy will not stop the type of financial panic that we saw in the fall of September 2008. Even President Bush, Vice President Cheney and their Republican Treasury Secretary and the Chairman of the Federal Reserve rejected using the Bankruptcy Code as a model for dissolving large, interconnected financial institutions. Only in the case of Lehman Brothers did they allow bankruptcy to proceed. The aftermath, with a 500 point drop in the stock market, was such a disaster that two days later the Bush Administration bailed out AIG because the markets could not sustain another major bankruptcy filing by a large financial firm.

Bankruptcy, while appropriate in many instances, can be a lengthy process that may not always allow for the speedy resolution of a large financial firm in time to avoid a broad financial panic that could result in major financial and economic disruptions. As Lehman Brothers navigated bankruptcy court, Business Week reported "Scores of hedge funds that had hundreds of millions in cash and other securities parked with Lehman's prime brokerage operation in London have had their accounts frozen. A number of these hedge funds have filed formal objections with the bankruptcy court and at least one fund, New York-based Bay Harbour Management, is mounting a legal challenge to the court's hastily-approved sale of Lehman's brokerage arm to Barclays Capital. Now a new and even more troubling scenario is arising: legal disputes stemming from the estimated $1 trillion in derivatives transactions that Lehman had entered into on behalf of itself and some of its customers." [Business Week, 10/2]

Under the bill's dissolution authority, the FDIC will be able to unwind a failing firm expeditiously and in an orderly manner so that existing contracts can be dealt with and secured creditors' claims can be addressed—much like is done today when commercial banks become insolvent.

MYTH: The CFPA limits consumer choices of financial products and stifles innovation.

FACT: There will be no limits on innovation. When we create choices for consumers, we create competition in the industry that benefits everyone. All that will be limited are abusive practices of the sort that led to the current crisis. The status quo has limited consumer choice by crowding out of the market better loans for which many borrowers qualified but were not offered. The CFPA will ensure that consumers are offered the best loans for which they qualify, and not just the riskiest loans that are most lucrative for originators.

MYTH: The new CFPA will raise costs for consumers as firms have to comply with new rules and standards and will pass on these costs to consumers. Consumers will have to pay more just to fund the agency.

FACT: An agency that could have helped prevent the risky lending practices that resulted in trillions of dollars of losses in Americans' retirement savings and home values is well worth the modest costs involved. They pale in comparison to the costs of regulatory failure. Moreover, as the CFPA will streamline enforcement of laws and rules that currently fall under seven different government agencies, costs to the companies and prices for consumers may well decline.

MYTH: This legislation will hurt community and small banks and merchants—those that didn't cause the financial meltdown but were hurt by it.

FACT: The bill ensures that small banks and credit unions, which play a key role in their communities, are not subject to undue regulatory burdens.

- Banks and thrifts under $10 billion in assets and credit unions under $1.5 billion in assets will continue to have their consumer protection examinations done by their existing regulators.
- CFPA will play a backup role unless the primary regulators fail in their oversight, and these institutions will not see their assessments for consumer protection exams change under this bill.

Merchants, retailers and other non-financial businesses will be excluded from the regulation and oversight of CFPA when they extend credit directly to consumers for the purchase of goods or services. Merchants and retailers can continue to provide credit and layaway plans without becoming subject to new regulation as long as they do not choose to resell the credit. Merchants and others are still subject to federal law through the Truth in Lending Act, which was passed almost 30 years ago. Also, doctors and other businesses that bill their customers after a service is provided will be excluded.

MYTH: The bill is a job killer and will drive up interest rates.

FACT: This is more scare tactics and fear mongering from the same crowd that said health care reform was going to kill grandma. Defenders of risky business on Wall Street are ignoring the destruction that lax oversight caused in the financial lives of Americans and American businesses—and also ignore the increased investment and entrepreneurship that a stable and growing economy will generate. Instituting strong consumer protections, improving transparency, and rewarding responsible investing are some of the best ways to foster competitiveness and grow our economy.

Wall Street Reform and Consumer Protection Act:

Questions & Answers

Q: Why is the Administration continuing the TARP? Shouldn't we end TARP and put the money toward deficit reduction?

A: The TARP will be preserved a while longer for the very reason it was created: to stabilize the financial system, and to help get credit flowing to Main Street. In the first round, large financial institutions took TARP money but didn't necessarily lend it to small businesses and families. Redirecting some TARP money to putting consumer and small business protections in place and to free up credit is in keeping with its original purpose.

Last year, Congress insisted on tough conditions on the financial rescue to maximize the returns to the taxpayers for this investment -- refusing to provide President Bush with a blank check -- and those efforts are paying off. A new report shows that the Treasury Department expects to recover all but $42 billion of the $364 billion disbursed in the first year to ailing financial institutions, with the portion invested in banks actually showing a profit. As a result, the Obama Administration now projects a $200 billion reduction in the deficit for this year.

Using a portion of the TARP funds to spur American job creation is critical for deficit reduction. A growing economy helped give us the budget surpluses of the '90s. Some have offered a false choice between creating jobs and reducing the deficit. Creating jobs reduces the deficit.

Q: Why are you acting on this before the Financial Crisis Inquiry Commission reports next year?

A: We have spent months developing common sense solutions to the financial meltdown we faced—and Wall Street reforms are now the next critical step to stabilize and grow our economy. People are right to be outraged by what happened on Wall Street, and Americans overwhelmingly support reform of Wall Street as part of our economic recovery. Of course, this is an ongoing process and will not end with this legislation; the commission's recommendations will guide future reforms.

Q: Will this legislation help consumers with rising credit card interest rates?

A: Yes. The new CFPA will have ongoing authority to rein in the credit card industry. They can also take on the issues of predatory lending, payday loans, check cashers, and overdraft fees. This bill builds on the consumer protections built into the Credit Cardholders Bill of Rights signed into law earlier this year.

Q: What does this do to the Federal Reserve?

A: The bill increases transparency at the Federal Reserve, which has played an enormous role in shoring up big banks and other financial institutions in this crisis. The reforms subject the Fed's lending programs to scrutiny by the non-partisan Government Accountability Office.

Under the bill, the Federal Reserve's use of Section 13(3) authority – to extend short-term borrowing and secured loans to individuals, partnerships, or corporations in "unusual and exigent circumstances" -- will be subject to significant new restrictions. Use of this authority will require approval by two-thirds of the members of the Council and the consent of the Treasury Secretary after certification by the President that an emergency exists. This authority may not be used to provide assistance to individual companies, and Congress will be able to disapprove further use of the authority.

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Tab 12: US Senate Committee on Banking, Housing and Urban Affairs "Section-by-Section Summary: Restoring American Financial Stability Act of 2009" November 16, 2009

11/16/09

Section-by-Section Summary

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2009

Sec. 1. Short title; table of contents

Sec. 2. Definitions

Sec. 3. Severability

Sec. 4. Effective Date

Title I – Agency for Financial Stability

Section 101. Short Title

The title may be cited as the "Financial Stability Act of 2009."

Section 102. Definitions

This section defines various terms used in the title. "Agency" means the Agency for Financial Stability, established under this title. "Bank holding company" has the meaning given it in section 2 of the Bank Holding Company Act ("BHCA"). "U.S. nonbank financial company" means a company (other than a bank holding company) that is incorporated in the U.S. and engaged in whole or in part in activities that are financial in nature (as defined in section 4(k) of the BHCA). "Foreign nonbank financial company" means a company (other than one treated as a bank holding company) that is incorporated outside the U.S. and engaged in whole or in part in activities in the U.S. that are financial in nature. A "financial company" refers to a U.S. nonbank financial company, foreign nonbank financial company, or bank holding company. A "specified financial company" refers to a financial company that is subject to enhanced supervision and prudential standards under section 107.

Section 103. Agency for Financial Stability Established

This section establishes the Agency, governed by a board of directors with the following membership: (1) the Chairperson of the Agency (appointed by the President, with the advice and consent of the Senate), (2) the Secretary of the Treasury, (3) the Chairman of the Board of Governors of the Federal Reserve System, (4) the Chairperson of the Financial Institutions Regulatory Administration ("FIRA"), (5) the Director of the Consumer Financial Protection 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 experience in insurance industry or regulation.

The Chairperson and the independent member will have six-year terms. The Agency's board of directors will meet at the call of the Chairperson at least once per quarter. The Agency will have its own employees and may also have personnel detailed from other Federal agencies.

Section 104. Agency Authority

This section enumerates the purposes and duties of the Agency, which include: (1) collecting information in order to assess risks to the financial system; (2) monitoring the financial services marketplace to identify threats to U.S. financial system stability; (3) facilitating information sharing among the member agencies; (4) identifying gaps in regulation that could pose risks to U.S. financial system stability; (5) requiring financial companies that may pose threats to U.S. financial system stability or economic growth in the event of their material financial distress or failure to submit to heightened supervision and prudential standards; (6) prescribing heightened prudential standards for such companies; (7) setting heightened capital, leverage, and liquidity standards that increase on a graduated basis for certain large bank holding companies; (8) identifying systemically important financial market utilities and payments, clearing, and settlement system activities and subjecting them to prudential standards by the Board of Governors of the Federal Reserve System; (9) providing a forum for discussion, analysis, and resolution of jurisdictional disputes among member agencies; and (10) reporting to and testifying before Congress.

The section also authorizes the Agency to obtain information from the member agencies and financial companies to carry out the provisions of this title.

Section 105. Authority to Require Supervision and Regulation of Financial Companies to Mitigate Systemic Risk

This section authorizes the Agency to identify financial companies that may pose threats to U.S. financial system stability or the U.S. economy in the event of their material financial distress or failure. These companies, designated as specified financial companies, would be subject to heightened supervision and prudential standards. The Agency will provide written notice to each financial company of its proposed determination and the company would have the opportunity for a hearing before the Agency to contest the proposed determination. The Agency will consult with the primary federal regulatory agency of each financial company or subsidiary of the company that is being considered for designation as a specified financial company.

Section 106. Registration with FIRA by Specified Financial Companies

This section directs specified financial companies to register with FIRA (other than specified bank holding companies or other financial companies already registered with FIRA).

Section 107. Enhanced Supervision and Prudential Standards for Specified Financial Companies

This section directs the Agency to establish prudential standards and reporting and disclosure requirements for specified financial companies that are more stringent than those applicable to other U.S. financial 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, prompt corrective action, concentration limits, and overall risk management requirements. The section enumerates the factors that the Agency shall consider in setting the standards. It requires that all specified financial companies remain well capitalized and well managed as defined by the Agency under this title. It also requires that each specified financial company establish a risk committee to be responsible for oversight of enterprise-wide risk management practices of the company. The section also includes a contingent capital requirement under which each specified financial company would maintain a minimum amount of long-term debt that is convertible to equity under certain conditions, and enumerates the factors that the Agency shall consider in rulemaking.

Section-by-Section Summary

Section 108. Heightened Standards for Bank Holding Companies that are Not Specified Financial Companies

This section directs the Agency to establish heightened risk-based capital, leverage, and liquidity requirements for bank holding companies that are not specified financial companies. The Agency may not apply the heightened standards to any bank holding company with total assets under $10 billion. The standards would apply to bank holding companies on a graduated basis, and the Agency should ensure, to the extent possible, that small changes in the factors used to set the standards (e.g., changes in the amounts and nature of financial assets) do not trigger sharp, discontinuous changes in the standards.

Under this section, the Agency will also establish rules to require bank holding companies that are publicly traded companies with total assets of not less than $10 billion to establish a risk committee.

Section 109. Reports and Public Disclosures

Under this section, the Agency may require reports from specified financial companies and their subsidiaries, but will use existing reports to the fullest extent possible. The Agency may prescribe, by regulation, enhanced public disclosures by specified financial companies in order to support market evaluation of the companies' capital adequacy and risk profiles.

The section also directs the Agency to require that each specified financial company periodically submit to the Agency, FIRA, and the FDIC: (1) a plan for rapid and orderly resolution in the event of material financial distress or failure; and (2) a report on credit exposures between the specified financial companies and other significant financial companies (as defined through Agency rulemaking). FIRA and the FDIC will jointly determine whether the resolution plan is credible and would facilitate an orderly resolution under the bankruptcy code or the resolution authority authorized in title II. Specified financial companies will have to resubmit resolution plans to correct deficiencies. Failure to resubmit a plan correcting deficiencies within a timeframe determined by the Agency may result in FIRA and the FDIC imposing more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the specified financial company. If, two years after the imposition of these requirements or restrictions, the company still has not resubmitted a plan that corrects the deficiencies identified by FIRA and the FDIC, these two agencies, in consultation with the Agency, may direct the company to divest certain assets or operations in order to facilitate an orderly resolution in the event of failure.

Section 110. Affiliations

This section affirms that nothing in this title requires a specified financial company to conform its activities to the requirements of section 4 of the BHCA (12 U.S.C. 1843). If a specified financial company does conduct activities that are not financial in nature or incidental thereto under section 4(k) of the BHCA, the Agency may require the specified financial company to establish an intermediate holding company that would house the company's financial activities. The Agency shall promulgate regulations to implement this section, including the criteria for requiring an intermediate holding company and any restrictions or limits on transactions between such holding company and its affiliates.

Section 111. Prompt Corrective Action for Specified Financial Companies

This section authorizes the Agency to take prompt corrective action to resolve capital deficiencies and other problems of specified financial companies. The provisions are substantively similar to the prompt corrective action requirements established in the Federal Deposit Insurance Act ("FDIA"). The Agency must establish capital thresholds to delineate the capital categories of well capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. FIRA must monitor any undercapitalized specified financial company, which must submit a capital restoration plan acceptable to FIRA. Requirements and restrictions would become more stringent for significantly undercapitalized specified financial companies. And within 90 days of a specified financial company becoming critically undercapitalized, FIRA, in consultation with the FDIC, must require that the company file for bankruptcy, file a petition for involuntary bankruptcy on behalf of the company, or submit a written recommendation to the Secretary for use of the resolution authority in Title 2.

Section 112. Concentration Limits

This section requires the Agency to establish regulations that impose limits on credit exposure to lessen the risks that the failure of a specified financial company could pose to another financial company or the stability of the U.S. financial system. Each specified financial company's credit exposure to any unaffiliated company may not exceed 25 percent of the specified financial company's capital stock and surplus (or a lower amount that the Agency may determine by regulation is necessary to mitigate risks to financial stability). The section defines credit exposures and permits the Agency, by regulation or order, to exempt transactions if the Agency finds that it is in the public interest to do so and consistent with the purposes of this section. The rules established under this section shall not take effect for 3 years after the publication of the final rule, with the possibility of two additional years, to allow for an orderly transition period.

Section 113. Regulations

This section requires the Agency to issue final regulations to implement this title no later than 18 months after the date of enactment, unless otherwise specified.

Section 114. Avoiding Duplication

This section directs the Agency to take actions necessary to avoid imposing requirements under this title that are duplicative of requirements applicable to financial companies under other provisions of law.

Section 115. Agency Funding

This section establishes a Financial Stability Fund in the U.S. Treasury to pay for expenses of the Agency and collect fees and assessments to cover those expenses. During the 2-year period following the date of enactment, the Board of Governors of the Federal Reserve System shall transfer to the Agency an amount sufficient to cover its expenses. After two years, the Agency shall establish by regulation an assessment schedule to charge specified financial companies for the expenses of the Agency. To the extent that a shortfall exists, the Board of Governors of the Federal Reserve System shall provide the Agency an amount sufficient to cover the shortfall.

Section 116. Resolution of Disputes among Member Agencies

This section authorizes a dispute resolution function for the Agency. The agency 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 Agency's intervention. The section prescribes the procedures for dispute resolution and makes the Agency's written decision binding on parties to the dispute.

Section-by-Section Summary

Section 117. Additional Standards Applicable to Activities or Practices for Financial Stability Purposes

This section authorizes the Agency to issue recommendations to the primary financial regulatory agencies to apply new or heightened prudential standards and safeguards, including those enumerated in sections 107 and 108, for a financial activity or practice conducted by financial companies under the agencies' jurisdiction. The Agency 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 financial companies or U.S. financial markets. The section requires that the Agency 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 Agency 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.

Section 118. Effect of Rescission of Identification.

This section requires the Agency to inform the primary financial regulatory agency (or agencies) of any Agency determination that a specified financial company, activity, or practice no longer requires any heightened standards implemented under this title. The primary financial regulatory agency may determine whether or not to keep such standards in effect.

Section 119. Mitigation of Systemic Risk.

This section authorizes the Agency and FIRA, after notice and opportunity for hearing, to require a specified financial company to sell or transfer assets to unaffiliated entities, to terminate certain activities, or to comply with conditions on conduct of certain activities. The Agency and FIRA would impose such requirements if, even after imposition of heightened prudential standards and other requirements under this title, the size, scope, or nature of activities of the specified financial company pose a threat to its safety and soundness or to U.S. financial stability.

Section 120. Rule of Construction

This section states that Agency rules and standards imposed under this title shall supersede any conflicting, less stringent requirements of the primary financial regulatory agency, but only to the extent of the conflict.

Section-by-Section Summary

Title II – Enhanced Resolution Authority

Section 201. Definitions

This section defines various terms used in this title. A “financial company” includes: (1) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act (“BHCA”), (2) a specified financial company, as defined in section 102, (3) a company predominantly engaged in activities that are financial in nature, as defined in section 4(k) of the BHCA, and (4) subsidiaries of any of these companies (except an insured depository institution, an insurance company, or any broker or dealer registered with the Securities and Exchange Commission (“SEC”) and which is a member of the Securities Investor Protection Corporation). A “covered financial company” is a financial company for which a determination has been made to use the resolution authority under section 202. The “appropriate Federal regulatory agency” (“AFRA”) means the FDIC, unless the largest subsidiary of the financial company is a broker or dealer, in which case it means the SEC.

Section 202. Systemic Risk Determination

This section establishes the process for triggering the use of the resolution authority. The board of the Financial Institutions Regulatory Administration (“FIRA”) and the board (or commission) of the AFRA 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 specified financial company is in default or in danger of default; (2) a description of the effects that the failure of the specified financial company would have on U.S. economic conditions or financial stability; and (3) the nature and extent of actions that should be taken under section 203. (The Secretary of the Treasury, Chairperson of FIRA, or Chairperson of the Agency for Financial Stability may request FIRA and the AFRA to consider making the recommendation, or FIRA and the AFRA 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 specified financial company is in default or in danger of default; (2) the failure of the specified financial company and its resolution under otherwise applicable law would have serious adverse effects on U.S. financial stability or economic conditions; and (3) any action under section 203 would avoid or mitigate such adverse effects. The Secretary would take into consideration the effectiveness of the action in mitigating adverse effects on the financial system and economy, 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 submit a report to Congress within 30 days of any determination, and the Government Accountability Office will review and report on the Secretary‘s determination.

Section 203. Resolution; Stabilization

This section requires that the Secretary appoint the FDIC as receiver of the covered financial company after a section 202 determination. 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 resolution; 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.

Once it has been appointed receiver, the FDIC, with the approval of the Secretary, may take certain actions with respect to the covered financial company or any covered subsidiary. These actions include: (1) making loans or purchasing debt; (2) purchasing assets or guaranteeing assets against loss; (3) assuming or guaranteeing obligations to third parties; (4) taking a lien on assets; and (5) selling or transferring any acquired assets, liabilities, and obligations. The FDIC may take any such actions only if it determines that such actions are necessary for financial stability and not for the purpose of preserving the covered financial company, and must receive the written approval of the Secretary. The FDIC must also ensure that shareholders would not receive any payment until after all other claims are fully paid, that the FDIC's actions would not prevent creditors from bearing losses, and that management responsible for the company's failure has been removed.

Section 204. Judicial Review

This section provides that if the Secretary appoints the FDIC as receiver pursuant to section 203, the covered financial company has 30 calendar days to challenge the appointment in federal district court.

Section 205. 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 or an acquisition, combination, or transfer of assets or liabilities under section 208.

Section 206. Termination and Exclusion of Other Actions

This section provides that receivership under section 203 for a covered financial company shall terminate and prevent any other bankruptcy or insolvency proceeding under federal or state law.

Section 207. Rulemaking

This section authorizes the FDIC, in consultation with the Agency for Financial Stability, to prescribe such rules or regulations as considered necessary or appropriate to implement this title.

Section 208. Powers and Duties of the Corporation

<u>Subsection (a). Powers and Authorities.</u>

The FDIC's powers and duties as receiver are substantively similar to those for a receiver under the Federal Deposit Insurance Act (FDIA). These powers and duties include: (1) succeeding to the rights, title, powers, and privileges of the covered financial company and its stockholders, officers, and directors; (2) taking over the assets of, and operating, the company with all the powers of shareholders, directors, and officers; (3) liquidating the company through sale of assets or transfer of assets to a bridge financial company established under subsection (h); (4) merging the company with another company or transferring assets or liabilities; (5) paying valid obligations that come due, to the extent that funds are available; (6) exercising subpoena powers; (7) utilizing private sector services to manage and dispose of assets; (8) terminating rights and claims of stockholders and creditors (except for the right to payment of claims); and (9) determining and paying claims.

<u>Subsection (b). Priority of Expenses and Unsecured Claims.</u>

The priority of expenses and unsecured claims is substantively similar to the FDIA (12 U.S.C. § 1821(d)(11)), except that specific language is added giving the United States a second priority position (in place of deposit claims in the FDIA) after administrative expenses. 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; maximize the present value of the proceeds (or minimize the amount of any loss) from disposing of the assets of the company; or contain serious adverse effects on financial stability and the U.S. economy.

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) in a manner substantively similar to the authority of the FDIC under the FDIA (12 U.S.C. § 1821(c)). However, 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 third business day after the date that the FDIC was appointed receiver.

Subsection (d). Valuation of Claims in Default.

This subsection is similar in certain respects to the FDIA's valuation of claims in default (12 U.S.C. § 1821(i)). It 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 no determination was made under section 202 and the company was liquidated under title 11 of the U.S. 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 or to mitigate serious adverse effects on financial stability or the U.S. economy.

Subsection (e). Limitation on Court Action.

This subsection generally precludes a court from granting injunctive relief against the FDIC when it is exercising its powers as receiver (substantively similar to the FDIA (12 U.S.C. § 1821(j)).

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. It is substantively similar to the FDIA (12 U.S.C. § 1821(k)).

Subsection (g). Damages.

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. It is substantively similar to the FDIA (12 U.S.C. § 1821(l)).

Subsection (h). Bridge Financial Companies.

This subsection authorizes the FDIC, as receiver, to establish one or more bridge financial companies. At the FDIC's discretion, 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. The subsection is substantively similar to the FDIA (12 U.S.C. § 1821(n)).

Section-by-Section Summary

Subsection (i). Sharing Records.

This subsection requires FIRA to make available to the FDIC all records relating to the covered financial company. This subsection is substantively similar to the FDIA (12 U.S.C. § 1821(o)).

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. It is substantively similar to the FDIA (12 U.S.C. § 1821(q)).

Subsection (k). Foreign Investigations.

This subsection authorizes the FDIC, as receiver, to request assistance from, and provide assistance to, any foreign financial authority. It is substantively similar to the FDIA (12 U.S.C. § 1821(r)).

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. It is substantively similar to the FDIA (12 U.S.C. § 1821(s)).

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 title 11 of the U.S. Code).

Subsection (n). Systemic Resolution Fund.

This subsection creates a fund that will be available to the FDIC to carry out the authorities in this title, including the payment of administrative expenses and payment of principal and interest on obligations issued to the Treasury that would be used to capitalize the fund.

Subsection (o). Risk-Based Assessments.

This subsection requires the FDIC to recover amounts expended under this title that have not otherwise been recouped by imposing one or more risk-based assessments on financial companies. FDIC would determine the terms and conditions of the assessment, with the concurrence of the Secretary and the Agency for Financial Stability. Any funds borrowed from the Treasury in connection with a determination under section 202 and actions taken under section 203 must be fully repaid within 60 months (with a possibility of an extension to avoid adverse effects on financial stability and the U.S. economy). The FDIC may not assess any financial company that has total assets less than $10 billion. The subsection also outlines factors that the FDIC shall consider in imposing risk-based assessments.

Section 209. Clarification of Prohibition Regarding Concealment of Assets from Receiver or Liquidating Agent

This section makes a conforming change to a provision of the criminal code relating to concealment of assets from the FDIC acting as receiver of a covered financial company.

Section-by-Section Summary

Section 210. Miscellaneous Provisions

This section makes conforming change to the bankruptcy code by adding covered financial companies to those entities excluded from the definition of the term "debtor," and clarifies the systemic risk exception provision in the FDIA. This section also makes conforming change to the netting provisions contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 by expanding the exceptions to include section 208(c) of this Act and section 1367 of the HERA (12 U.S.C. § 4617(d)).

Section-by-Section Summary

Title III – Financial Institutions Regulatory Administration

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 key terms used in this title, including, "covered institutions" which are the financial institutions subject to regulation by the Financial Institutions Regulatory Administration, and "transfer date" which 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 to the Financial Institutions Regulatory Administration. The transfer of personnel, property and funding are also keyed to the transfer date.

Subtitle A – Financial Institutions Regulatory Administration Established

Section 311. Establishment of Administration

Establishes a new independent agency, the Financial Institutions Regulatory Administration, "FIRA". It amends other federal laws to add FIRA, the Agency for Financial Stability and the Consumer Financial Protection Agency to the list of independent regulatory agencies that are free from certain federal information collection requirements and are not required to submit legislative recommendations or testimonies for prior approval.

Section 312. Board of Directors of the Administration

Establishes a 5 member board of directors to manage FIRA. The board is comprised of the Chairperson of the FDIC, the Chairman of the Federal Reserve Board, and 3 individuals appointed by the President with the advice and consent of the Senate. Not more than 3 board members may be from the same political party. The Chairperson has a 5 year term. The Vice Chairperson must have experience in state bank supervision. The term of independent board members is 6 years.

This section also provides for the filling of Board vacancies, imposes employment restrictions on Board members, both during the individual's service on the Board and post service restrictions, and sets the Executive Service levels for Board members' compensation.

Section 313. State Bank Advisory Board

Establishes a State Bank Advisory Board within FIRA. The Advisory Board is comprised of 5 state bank commissioners serving on a rotating basis for 2 years. The Advisory Board is tasked with keeping the FIRA Board informed about developments and issues relating to state banks and making recommendations to the FIRA Board concerning: rules, guidelines and orders of FIRA; the streamlining of the regulation and supervision of state-chartered community banks; and policies of FIRA that may affect the financial performance, condition, efficiency or competitiveness of state banks.

Section-by-Section Summary

Section 314. Division of Community Bank Supervision

Establishes the Division of Community Bank Supervision within FIRA specifically to make recommendations to FIRA for standards appropriate to the supervision of community banks; to examine and supervise community banks; and to promote a healthy community bank sector. The Division is headed by a Director appointed by the Chairperson of FIRA who reports directly to the Chairperson.

This section also expressly prohibits any FIRA Board member and any employee of FIRA from promoting the conversion of a state bank to a national bank, subject to rules by the FIRA Board in consultation with the State Bank Advisory Board.

Subtitle B – Transfer of Powers and Duties to FIRA

Section 321. Transfer Date

Establishes a transfer date of 1 year by which existing agency powers must be transferred to FIRA. Personnel and property must be transferred within 90 days of the transfer date. This section also establishes a process under which the Secretary of the Treasury may designate another date, but no later than 18 months.

Section 322. Powers and Duties Transferred

Upon the transfer date, all functions of the OCC and OTS are transferred to FIRA. All functions of the FDIC relating to supervision and regulation of state nonmember banks and insured state branches of foreign banks are transferred to FIRA. The FDIC's functions relating to deposit insurance and resolution are specifically not transferred. All functions of the FRB relating to supervision and regulation of member banks, bank holding companies and their affiliates, foreign banks and branches, agencies and representative offices of foreign banks, commercial lending companies, and companies operating under the International Banking Act of 1978 are transferred to FIRA. Specifically, the FRB's functions relating to monetary policy, open market operations, payment, settlement or clearing activities, financial market utilities, and advances or extensions of credit under the Federal Reserve Act are reserved for the FRB.

Section 323. Abolishment

Abolishes the OCC and OTS.

Section 324. Savings Provisions

Preserves existing rights, duties and obligations of the OCC, OTS, FDIC, and FRB that existed on the day before the transfer date. This section also preserves existing law suits by or against the OCC, OTS, FDIC, or the FRB, but substitutes FIRA for these agencies upon the transfer date where their functions have been transferred to FIRA.

This section also continues existing orders, regulations, determinations, agreements, procedures, interpretations and advisory materials of the agencies whose functions are transferred to FIRA.

Section 325. References in Federal Law to Federal Banking Agencies

Provides that references in federal law to the OCC or OTS, or to the FDIC or the FRB with respect to functions transferred to FIRA, are deemed to be references to FIRA.

Section-by-Section Summary

Subtitle C – Operations of FIRA

Section 331. Transferred powers, authorities, rights, and duties

Gives FIRA all powers, authorities, rights and duties vested in the OCC and OTS, and in the FDIC and the FRB with respect to the functions transferred to FIRA.

Section 332. Regulations and Orders

FIRA may prescribe regulations, guidelines and orders as appropriate to carry out its powers.

Section 333. Additional Powers and Duties of the Chairperson

The Chairperson of FIRA shall also serve on the boards of the Agency for Financial Stability and the Consumer Financial Protection Agency, and assume the Comptroller of the Currency's position on the board of the Neighborhood Reinvestment Corporation.

This section gives FIRA independent litigating authority.

Section 334. Additional Powers of the Board of Governors and the Federal Deposit Insurance Corporation

The FRB may request information from financial institutions and FIRA, and request that its employees participate with FIRA in any examination if the FRB determines such information or participation are necessary to carry out its responsibilities for monetary policy, open market operations, payment, settlement, or clearing activities, financial market utilities, or advances or extensions of credit under the Federal Reserve Act. FIRA must provide the FRB with information it requests and must coordinate with the FRB to enable FRB employees to participate in exams.

The Chairperson of the FDIC is given the same access to information and participation in examinations when the FDIC determines the information or participation is necessary to carry out the FDIC's responsibilities relating to deposit insurance or resolution.

Section 335. Funding

This section sets forth the funding for FIRA, including the establishment of the FIRA Fund. The Chairperson may collect assessments, fees, or other charges from the financial institutions subject to its supervision to carry out its responsibilities. In establishing the appropriate assessment, fee or charge, the Chairperson may take into account the total assets of any institution, the financial and managerial condition of the institution, and the examination rating of the institution.

<u>Fees for federally chartered institutions</u> -- With respect to federally chartered institutions, the amount of assessments, fees, or charges must at least cover the estimated total expenses of FIRA for supervising these institutions. (For purposes of describing this section, the terms "supervision" or "supervising" refer to all duties of FIRA with respect to each class of institution, including administrative expenses, chartering federal institutions, and rulemaking.) For federally chartered institutions with less than $10 billion in assets, the assessments may not exceed 20 percent of the aggregate amount collected from all federally chartered institutions.

Section-by-Section Summary

<u>Fees and funding for state chartered institutions</u>

Small State Chartered Institutions -- FIRA may not assess any state chartered bank, thrift, branch or agency, with total assets of less than $10 billion. The FRB shall transfer to FIRA an amount equal to the total costs of supervising state licensed branches and agencies of foreign banks with assets less than $10 billion. The FRB shall transfer to FIRA an amount equal to 20 percent of the estimated total expenses of FIRA for supervising state chartered banks and thrifts with less than $10 billion in assets. The FDIC shall transfer to FIRA an amount equal to 80 percent of the estimated total expenses FIRA incurs for supervising these state banks and thrifts.

Large State Chartered Institutions -- FIRA must assess state institutions with assets of $10 billion or more an amount equal to 50 percent of the costs associated with their supervision. The FRB shall transfer an amount equal to 50 percent of FIRA's estimated expenses for FIRA's duties relating to these large state chartered institutions.

<u>Fees and funding for holding companies</u>

Small Holding Companies -- FIRA may not assess any bank holding company or savings and loan holding company with less than $10 billion in assets. The FRB shall transfer an amount equal to FIRA's total estimated expenses for carrying out its duties for these bank holding companies and savings and loan holding companies. These estimated expenses may not include the estimated expenses for supervising the depository institution subsidiaries of these holding companies.

Large Holding Companies -- The assessment of holding companies with total assets of $10 billion or more must be sufficient to cover the estimated expenses associated with their supervision. Estimated expenses for holding company supervision may not include the estimated expenses for supervising their depository institution subsidiaries.

<u>Fees for specified financial companies that are not bank holding companies</u> -- For other institutions that are subject to FIRA's supervision – i.e., specified financial companies that are not bank holding companies – the aggregate amount of assessments collected by FIRA must cover the total estimated expenses associated with their supervision.

Section 336. Personnel

The Chairperson may fix the number of and appoint and direct all employees of FIRA and may also determine their compensation. Compensation may be determined without regard to the General Schedule pay rates. The Chairperson must report to Congress annually about the structure of compensation and benefits for employees.

Section 337. Contracting and Leasing Authority

The Chairperson has the authority to enter into and perform contracts and to hold, lease, maintain, or sell property.

Section-by-Section Summary

Subtitle D – Additional FIRA Authority for Specified Financial Companies

Section 341. Examinations of Companies that do not Control Banks

FIRA may examine specified U.S. nonbank financial companies and any subsidiaries of such companies and any U.S. subsidiary, branch, or agency of a specified foreign nonbank financial company 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 prudential standards the Agency for Financial Stability promulgates and any other federal law that FIRA has jurisdiction to enforce against these companies.

To the extent possible, FIRA shall rely on reports of examination of functionally regulated subsidiaries made by their primary regulator.

FIRA shall require periodic public disclosures to support market evaluation of the risk profile, capital adequacy, and risk management capabilities of specified financial companies.

Section 342. Enforcement

Specified U.S. nonbank financial companies and specified foreign nonbank financial companies will be subject to the enforcement provisions under section 8 of the Federal Deposit Insurance Act.

If FIRA determines that a functionally regulated subsidiary of one of these companies does not comply with the regulations of the Agency for Financial Stability or otherwise poses a threat to the financial stability of the U.S., FIRA 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, FIRA shall report this failure to the Agency for Financial Stability.

Section 343. Acquisitions

A specified financial company shall be treated as a bank holding company for purposes of section 3 of the Bank Holding Company Act which governs acquisitions. A specified financial company 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 FIRA.

In addition to other criteria under the Bank Holding Company Act for reviewing acquisitions, FIRA 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. FIRA must deny any acquisition for which notice is submitted unless the specified company is well capitalized and well managed both before and after the acquisition.

Section 344. Prohibition Against Management Interlocks Between Certain Financial Holding Companies

A specified financial company shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act. A management official of a specified financial company may not serve as a management official of any other nonaffiliated specified financial company.

Section 351. Interim Use of Funds, Personnel, and Property

The Chairperson of FIRA is given interim authority beginning on the date of the Chairperson's appointment and until the transfer date to, in general, facilitate an orderly transfer of functions to FIRA. During this time period, the Chairperson may request funding from the OCC, the OTS, the FRB, and the FDIC.

Section 352. Transfer of Employees

All employees of the OCC and OTS are transferred to FIRA. The Chairperson in consultation with the FRB and FDIC shall determine the number and type of employees necessary to carry out the duties transferred to FIRA from these agencies. The FRB and FDIC must transfer to FIRA the employees the Chairperson determines necessary.

Employees are transferred within 90 days of the transfer date. Their status and tenure are protected upon transfer to FIRA. Employees are further protected from involuntary separation, reassignment outside their locality pay area, and downgrade in salary for 2 years after the transfer date, with certain exceptions. This section provides for continuation of employee benefits. Not later than 2 years from the transfer date, the Chairperson must implement a uniform pay and classification system for transferred employees.

Section 353. Property Transferred

The OCC and OTS must transfer all property not later than 90 days after the transfer date. Within 90 days of the transfer date, the FRB and FDIC must transfer all property the Chairperson of FIRA determines, in consultation with the FRB and FDIC, was used to support the functions at those agencies transferred to FIRA.

Section 354. Funds Transferred

Except to the extent necessary to dispose of the affairs of the OCC and OTS, all funds available to those agencies must be transferred on the transfer date.

Section 355. Disposition of Affairs

During the 90 day period beginning on the transfer date, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the FRB, and the Board of Directors of the FDIC, shall manage employees and property and take such actions as necessary to wind up the affairs relating to any function transferred to FIRA.

Section 356. Continuation of Services

Any agency, department or instrumentality of the U.S. that was providing support services to the OCC, OTS, FRB, or the FDIC, in connection with functions transferred, shall continue to provide such services until the transfer of functions is complete and consult with the Chairperson of FIRA to coordinate and facilitate a prompt and orderly transition.

Section-by-Section Summary

Subtitle F – Termination of Federal Thrift Charter

Section 361. Termination of Federal Savings Associations

Upon the date of enactment of this Act, the Director of the OTS may not issue a charter for a federal savings association.

Section 362. Branching

A thrift that converts to a bank may continue to operate its branches.

Subtitle G – Additional Powers of the Corporation

Section 371. Deposit Insurance Reform

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 provides that an assessment of an insured depository institution shall be an amount equal to the product of an assessment rate established by the FDIC and the amount of the average total assets of the insured depository institution during the assessment period, minus the amount of the average tangible equity of the insured depository institution during the assessment period.

Section 372. Management of the Federal Deposit Insurance Corporation

This section replaces the Comptroller of the Currency's seat on the FDIC Board of Directors with the Chairman of the FRB, and the Director of the OTS' board membership with the Chairperson of FIRA.

Section-by-Section Summary

Title IV—Regulation of Advisers to Hedge Funds and Others

Section 401. Short Title
"Private Fund Investment Advisers Registration Act of 2009".

Section 402. Definitions

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

Section 404. Collection of Systemic Risk Data; Reports; Examinations; Disclosures
Advisors to private funds must maintain and file specific systemic risk data which the Commission shall periodically examine and share with other regulators.

Section 405. Disclosure Provision Eliminated
Eliminates the provision of the Advisor's Act that prohibits the Commission from seeking information from Advisors about their clients.

Section 406. Clarification of Rulemaking Authority

Section 407. Exemptions of venture capital fund advisers
No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund.

Section 408. Exemption of and record keeping by private equity fund advisers
The Commission shall require certain private equity fund advisors to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary and appropriate in the public interest and for the protection of investors.

Section 409. Family offices
Adds family offices to the list of entities not to be regulated as Investment Advisors as defined by the Investment Advisor's Act.

Section 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers
Increases the threshold above which Investment Advisors must register with the Commission to $100,000,000.

Section 411. Custody of client assets
Requires the Commission to write rules for Investment Advisors to use an independent custodian to hold client assets, where appropriate.

Section 412. Adjusting the accredited investor standard for inflation
Requires the Commission to increase the accredited investor definition and to adjust that definition for inflation at least once every five years.

Section-by-Section Summary

Section 413. Studies and reports

The GAO shall submit separate reports on (1) Accredited investor criteria; (2) A hedge fund SRO; and (3) Short selling.

Section 414. Transition 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 Agency for Financial Stability ("Agency") that the Agency designate an insurer, including its affiliates, as an entity subject to regulation as a specified 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 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).

Section-by-Section Summary

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 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

Section 602. Definitions

This section defines key terms such as "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 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 on the ability of FIRA to obtain reports from, examine and regulate subsidiaries of bank holding companies. In addition, when reviewing proposed acquisitions and mergers of banks, bank holding company proposals to engage in nonbank activities or financial holding company proposals to engage in activities that are financial in nature, FIRA must consider the effect of any such proposal on the stability of the United States banking or financial system. A financial holding company also may not engage in certain activities that are financial in nature without the approval of FIRA if they involve the acquisition of assets that exceed $25 billion.

Section 605. Requirements for Financial Holding Companies to Remain Well Capitalized and Well Managed

This section amends the Bank Holding Company Act of 1956 to require all financial holding companies engaging in expanded financial activities to remain well capitalized and well managed.

Section 606. 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-by-Section Summary

Section 607. 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 608. 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 609. 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 610. 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 611. Restriction on Conversions of Troubled Banks and Savings Associations

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

Section 612. 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 613. 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 614. 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 615. Rules Regarding Capital Levels of Holding Companies

This section clarifies that FIRA may adopt rules governing the capital levels of bank and savings and loan holding companies. FIRA may also require a commercial firm that owns or controls more than one insured depository institution to establish an intermediate holding company that is solely engaged in financial activities to hold the insured depository institutions in order to provide for enhanced supervision of the insured depository institutions. In addition, FIRA may require any company that owns or controls an insured depository institution to serve as a source of financial strength for such institution.

Section 616. 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-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 Agency for Financial Stability to prescribe rules if the CFTC and SEC fail to meet the statutory deadlines.

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 notify the Agency for Financial Stability 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.

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-standardized 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, and 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. 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, 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 FIRA (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 notification process with the Agency for Financial Stability. If a swap dealer or major swap participant is exempt from the mandatory margin requirement a counterparty has the right to require that margin be posted. 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.

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 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

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

Section-by-Section Summary

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 FIRA 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 FIRA 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 FIRA.

Section 730. Enforcement

This section clarifies the enforcement authority of the CFTC with respect to swaps and swap repositories, and of the FIRA 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 Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“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 Agency for Financial Stability to prescribe rules if the CFTC and SEC fail to meet the statutory deadlines.

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 notify the Agency for Financial Stability 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-standardized 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 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 FIRA (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 to notification process with the Agency for Financial Stability. If a security-based swap dealer or major swap participant is exempt from the mandatory margin requirement a counterparty has the right to require that margin be posted. 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 securities listed on a registered national securities exchange and 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.

Section-by-Section Summary

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.

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).

Section-by-Section Summary

Subtitle C — Other Provisions

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 Agency for Financial Stability 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 Agency for Financial Stability 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 Agency for Financial Stability 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 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 Agency for Financial Stability 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 Agency for Financial Stability, 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 Agency for Financial Stability 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 Regulation of Securities

Subtitle A— Increasing Investor Protection

Section 911. Investor Advisory Committee established

There is established within the Commission the Investor Advisory Committee to advise and consult with the Commission on investor issues.

Section 912. Clarification of authority of the Commission to engage in consumer testing

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 issued or carried out under any provision of the securities laws.

Section 913. Regulation of brokers, dealers, and investment advisers

Removes the broker-dealer exemption from the Advisors Act and gives the Commission exemptive authority from Advisor prohibition from dealing securities with clients.

Section 914. Office of the Investor Advocate

There is established within the Commission the Office of the Investor Advocate to assist investors in resolving problems with the Commission, identify areas in which investors have encountered significant problems in dealings with the Commission, and other issues.

Section 915. Streamlining of filing procedures for self-regulatory organizations

Make the SEC process for reviewing SRO filings more certain and efficient.

Section 916. Study regarding financial literacy among investors

The Commission shall 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

The GAO shall conduct a study and issue a report on mutual fund advertising.

Section 918. Clarification of Commission authority to require investor disclosures before purchase of investment company shares

Authorizes the SEC to require broker-dealers to disclose to clients their compensation for transactions of open- and closed-end mutual funds.

Subtitle B— Increasing Regulatory Enforcement and Remedies

Section 921. Authority to issue rules to restrict mandatory predispute arbitration

The Commission shall conduct a rulemaking to prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between them.

Section 922. Whistleblower protection

There is established the Investor Protection fund with which the Commission may pay an award to whistleblowers and for other reasons, and there is established that No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower.

Section 923. Conforming amendments for whistleblower protection

Section 924. Implementation and transition provisions for whistleblower protection

The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

Section 925. Collateral bars

Gives the Commission the authority to bar individuals from all securities industries for transgressions in only one of the securities industries.

Section 926. Aiding and abetting authority under the Securities Act and the Investment Company Act

Any person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with 1 or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to which such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

Section 927. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act

Any person that knowingly or recklessly aids, abets, counsels, commands, induces, or procures another person to commit a violation of certain securities rules shall be deemed to be in violation of such rules to the same extent as the person that committed such violation.

Section 928. Restoring the authority of State regulators over Regulation D offerings

Gives states the authority over Regulation D offerings.

Subtitle C— Improvements to the Regulation of Credit Rating Agencies

Section 931. Findings

Section-by-Section Summary

Section 932. Enhanced regulation of nationally recognized statistical rating organizations

Establishes the Commission Office of Credit Ratings that will conduct an annual examination of each NRSRO, gives the Commission authority to fine or revoke the registration on NRSROs, gives the Commission oversight of NRSRO internal controls and rating methodologies, and other provisions.

Section 933. State of mind in private actions

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 rated security or to obtain reasonable verification of such factual elements from other sources that it considered to be competent and that were independent of the issuer and underwriter.

Section 934. Referring tips to law enforcement or regulatory authorities

Each NRSRO shall refer to the appropriate law enforcement or regulatory authorities any information that the NRSRO receives and finds credible that alleges that an issuer of securities rated by the NRSRO has committed or is committing a violation of law that has not been adjudicated by a Federal or State court.

Section 935. Consideration of information from sources other than the issuer in rating decisions

In producing a credit rating, an NRSRO shall consider information about an issuer that the NRSRO has, or receives from a source other than the issuer, that the NRSRO finds credible and potentially significant to a rating decision.

Section 936. Qualification standards for credit rating analysts

The Commission or other body shall issue rules that 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

The Commission shall issue final regulations not later than 1 year after the date of enactment of the Act.

Section 938. Studies and reports

The GAO shall conduct separate studies of: (1) the scope of provisions of Federal, State, and local law that require the use of ratings issued by NRSROs; (2) alternative business models for the credit rating industry; (3) the utility of an independent professional analyst organization for NRSRO rating analysts; (4) how the Commission has carried out the NRSRO provisions of the Act; and (5) a representative sample of the credit ratings issued by each NRSRO to assess the predictive performance of the initial credit ratings in each such sample.

The Commission shall conduct a study of NRSRO independence.

Subtitle D— Improvements to the Asset-Backed Securitization Process

Section 941. Regulation of credit risk retention

The Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a material portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

Section 942. Periodic and other reporting for asset-backed securities

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

Section 943. Representations and warranties in asset-backed offerings

The Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities that require each credit rating agency to include in any report accompanying a credit rating a description of the representations, warranties, and enforcement mechanisms available to investors.

Section 944. Exempted transactions under the Securities Act of 1933

Removes the '33 Act exemption on 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

The Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security that require any issuer of an asset-backed security— to perform a due diligence analysis of the assets underlying the asset-backed security; and to disclose the nature of this analysis.

Subtitle E— Accountability and Executive Compensation

Section 951. Shareholder vote on executive compensation disclosures

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 952. Shareholder vote on golden parachute compensation policy

The proxy solicitation material containing golden parachute disclosure shall require a separate shareholder vote to approve the policy.

Section 953. Compensation committee independence

The Commission shall 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.

Section-by-Section Summary

Section 954. Executive compensation disclosures

The Commission shall 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.

Section 955. Clawback

Each issuer shall develop and implement a policy providing that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, 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 under the accounting restatement.

Section 956. Disclosure regarding employee hedging

The Commission shall require each issuer to disclose in the annual proxy statement whether the employees 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 957. Excessive compensation by holding companies of depository institutions

FIRA shall 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 958. Higher capital charges

The appropriate Federal banking agency may impose higher capital standards for an insured depository institution with compensation practices that the appropriate Federal banking agency determines pose a risk of harm to the depository institution.

Section 959. Compensation standards for holding companies of depository institutions

The appropriate Federal banking agency shall prohibit the payment by a depository institution holding company of executive compensation that is excessive or could lead to material financial loss to the institution controlled by the depository institution holding company, or to the consolidated depository institution holding company.

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

Section 961. Report and certification of internal supervisory controls

The Commission shall submit a report certified by the Division Directors to the House Financial Services and Senate Banking Committees on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

Section-by-Section Summary

Section 962. Biannual report on personnel management

The GAO shall submit a biannual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

Section 963. Annual financial controls audit

The Commission must submit an annual report to Congress that describes the responsibility of the management of the Commission 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.

Section 964. Report on oversight of national securities associations

Once every three years, the GAO shall submit a report to Congress on the Commission's oversight of the NRSROs.

Section 965. Compliance examiners

The Commission 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. Whistleblower and suggestion program for employees of the Commission

The Commission Inspector General will establish a hotline and a reward program for Commission employees to submit suggested improvements and allegations of waste, fraud, or misconduct.

Subtitle G— Strengthening Corporate Governance

Section 971. Election of Directors by majority vote in uncontested elections

The Commission shall direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer who has on their board members that did not receive a majority vote in uncontested board elections.

Section 972. Proxy access

Gives the Commission the authority to require issuers to allow shareholders to put nominees on the company proxy.

Section 973. Disclosures regarding chairman and CEO structures

The Commission shall issue rules to require an issuer to disclose in the proxy statement the reason that the issuer has chosen the same person to serve as chairman of the board of directors and chief executive officer.

Section-by-Section Summary

Section 974. Shareholder vote on staggered terms of directors

The Commission shall direct the national securities exchanges and the national securities associations to prohibit the listing of any security of an issuer that has a board with staggered terms of service without giving the shareholders a vote on this issue.

Subtitle H— Municipal Securities

Section 975. Regulation of municipal securities and changes to the board of the MSRB

Provides for the regulation of municipal securities dealers and advisors, changes the composition of the MSRB, and other related matters.

Section 976. Government Accountability Office study of increased disclosure to investors

The GAO shall conduct a study and review of the disclosure required to be made by issuers of municipal securities and report on the findings.

Section 977. Government Accountability Office study on transparency of trading in the municipal securities

The GAO shall conduct a study and issue a report on the transparency of trading in the municipal securities market.

Section 978. Study of funding for Government Accounting Standards Board

The Commission shall 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.

Subtitle I— Public Company Accounting Oversight Board, Aiding and Abetting, and Other Matters

Section 981. Authority to share certain information with foreign authorities

Certain information that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, under certain conditions.

Section 982. Oversight of brokers and dealers

Gives the PCAOB oversight authority over broker-dealers

Section 983. Portfolio margining

Adds portfolio margining considerations to SIPA.

Section-by-Section Summary

Section 984. Private civil action for aiding and abetting

For purposes of any private civil action any person that knowingly or recklessly provides substantial assistance to another person in violation of the '34 Act shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided.

Section 985. Technical corrections to Federal securities laws

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

Changes the definition of a material loss for the purposes of conducting a material loss review and provides for non-material loss information.

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

Defines a material loss and provides for reports and information for material and non-material losses.

Section 989. Government Accountability Office study on proprietary trading

The GAO shall conduct a study on proprietary trading by financial institutions and the implication of this practice on systemic risk.

Section 989A. Senior investor protection

Uses grants to states to protect senior investors

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

Section 991. Securities and Exchange Commission self-funding

Provides for the SEC to become a self-funded organization.

Section-by-Section Summary

Title X--Consumer Financial Protection Agency

Section 1001. Short Title

Establishes the name of the title to be the "Consumer Financial Protection Agency Act of 2009."

Section 1002. Definitions

Subtitle A –The Consumer Financial Protection Agency.

Section 1011. Establishment of the Agency

Establishes the Consumer Financial Protection Agency (CFPA) as an independent agency in the executive branch to regulate the provision of financial products and services to consumers.

Section 1012. Board of Directors

Vests the management of the CFPA in a 5 member Board – 4 of whom are appointed by the president and confirmed by the Senate, and the Chairperson the Financial Institutions Regulatory Administration (FIRA). Establishes the terms of members of the Board and compensation levels. Requires the President to designate 1 member of the Board to serve as Director, who shall be the Chief Executive of the Board.

Section 1013. Executive and Administrative Powers

Authorizes the Board to establish general policies with respect to all executive and administrative functions of the CFPA; provides for the Director to exercise executive and administrative functions; establishes a quorum and majority vote requirement for the transaction of business.

Section 1014. Administration

Authorizes the CFPA to appoint and employ officials and professional staff, and requires the CFPA to establish research, community affairs, and consumer complaint units. Establishes an Office of Fair Lending and Equal Opportunity and an Office of Financial Literacy.

Section 1015. Consumer Advisory Board

Provides for the establishment of a Consumer Advisory Board to advise and consult with the Agency on the exercise of its functions.

Section 1016. Coordination

Requires the CFPA to coordinate with other Federal agencies and State regulators to promote consistent regulatory treatment of consumer and investor products and services. This section also requires the CFPA to coordinate consumer education initiatives with each agency that is a member of the Financial Literacy and Education Commission.

Section 1017. Reports to Congress

Requires the CFPA to prepare and submit reports to the President and Congress concerning the Agency's regulation, supervision, and enforcement activities.

Section-by-Section Summary

Section 1018. Funding; Fees and Assessments; Penalties and Fines

Provides authority for the CFPA to collect annual fees or assessments to recover funds expended based on the size, complexity, and risk posed of the covered person; requires the Federal Reserve to contribute to the operating budget of the CFPA; establishes a victims' relief fund for civil penalties obtained by the CFPA.

Section 1019. Effective Date

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

Subtitle B – General Powers of the CFPA.

Section 1021. Mandate and Objectives

Mandates the CFPA to promote transparency, simplicity, fairness, accountability and access in the market for consumer financial products and services. Establishes the objectives of the Agency, which include ensuring that consumers have and understand information needed to make decisions about consumer financial products and services; that consumers are protected from deception and abuse; that markets for consumer products and services operate fairly and efficiently with growth and innovation; and that all consumers have access to financial services.

Section 1022. Authorities

Authorizes the CFPA to administer, enforce and otherwise implement this title, and to administer and enforce rules with respect to a number of consumer protection laws. It permits the CFPA to prescribe rules; set standards for rulemaking; and permits the CFPA to provide exemptions from certain rules. This section also gives the CFPA supervisory and examination authority for consumer compliance; this authority is exclusive as to banking institutions. It creates a mechanism for resolving any supervisory disputes between the CFPA and FIRA. This section gives the CFPA principal authority to enforce this title, and provides for other federal agencies to make referrals of violations to the Agency and to have backstop authority to enforce the laws.

Section 1023. Collection of Information; Confidentiality Rules

Grants the CFPA authority to gather information for research purposes regarding business conduct and to prescribe rules regarding the confidential treatment of information it obtains under this title.

Section 1024. Limitations on Authorities of the CFPA; Preservation of Authorities

Excludes from the authority of the CFPA merchants, retailers, and other sellers of nonfinancial goods and services, including real estate brokerage activities. Also excludes these entities for certain credit transactions. Specifies other exclusions, including persons regulated by the SEC and CFTC for activities regulated by those agencies. Prohibits the CFPA from establishing a usury limit.

Section 1025. Monitoring; Assessments of Significant Rules; Reports

Requires the CFPA to monitor for risks to consumers in the market for consumer financial products and services and publish a report of significant findings of its monitoring activities at least once each year. This section also requires the CFPA to assess each significant rule it adopts under this title three years after it is effective, but no later than five years afterwards.

Section 1026. Authority to Restrict Mandatory Pre-Dispute Arbitration

Permits the CFPA, by rule, to prohibit or impose conditions on mandatory pre-dispute arbitration agreements between consumers and covered persons if doing so is in the public interest and for the protection of consumers.

Section 1027. Supervision of Nondepository Covered Persons

Requires the CFPA to develop risk-based programs to supervise nondepository covered persons. The CFPA is authorized to prescribe registration, reporting, and examination standards based on an assessment by the CFPA of risks posed to consumers, and other criteria. The CFPA is authorized to require reports from nondepository covered persons.

Section 1028. Effective Date

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

Subtitle C – Specific CFPA Authorities

Section 1031. Prohibiting Unfair, Deceptive, or Abusive Acts or Practices

Authorizes the CFPA to make rules and take actions to prevent a covered person from committing or engaging in unfair, deceptive or abusive acts or practices under Federal law in connection with any transaction with a consumer for a financial product or service.

Section 1032. Disclosures

Authorizes the CFPA to prescribe rules to ensure appropriate and effective disclosures to consumers of the costs, benefits, and risks associated with any consumer financial product or service. Also requires the Agency to propose model disclosures that integrate TILA and RESPA disclosures within one year after the transfer date.

Section 1033. Sales Practices

This section authorizes the CFPA to adopt rules regarding the manner, settings, and circumstances for the provision of consumer financial products or services.

Section 1034. Consumer Testing and Pilot Disclosures

Requires the CFPA to establish standards and procedures for the approval of pilot disclosures to be provided to consumers by covered persons. Such pilots must be based on consumer testing that indicate the pilot would improve disclosures to consumers.

Section 1035. Adopting Operational Standards to Deter Unfair, Deceptive, or Abusive Practices

Encourages States to prescribe standards for covered persons, other than insured depository institutions and credit unions, to prevent and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services. Authorizes the CFPA to prescribe such standards.

Section-by-Section Summary

Section 1036. Duties of Covered Persons

Requires the CFPA to adopt rules imposing duties on a covered person, or an employee of a covered person, or agent or independent contractor for a covered person, who deals directly with consumers. The rules prescribed under this section are enforceable only by the CFPA in an administrative proceeding or by state regulator in an appropriate administrative proceeding.

Section 1037. Consumer Rights to Access Information

Authorizes the CFPA to prescribe rules requiring a covered person to make available to consumers certain information in an electronic form usable by consumers, with certain exceptions, such as confidential commercial information.

Section 1038. Prohibited Acts

This section makes it unlawful for any person to market, offer or sell financial products or services in violation of this title or rule or order adopted by the CFPA.

Section. 1039. Effective Date

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

Subtitle D – Preservation of State Law

Section 1041. Relation to State Law

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

Section 1042. Preservation of Enforcement Powers of States

Authorizes any State attorney general to bring civil actions for violations of this title. Before initiating any action, a State attorney general or appropriate State regulator must provide prior notice to the CFPA where practicable. Confirms that this title has no impact on the authority of State securities regulators or State insurance regulators regarding enforcement actions or rulemaking with regards to persons these agencies regulate, with the exception of credit, mortgage, and title insurance.

Section 1043. 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.

Section 1044. Clarification of Law Applicable to Non-Depository Institutions Subsidiaries

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

Section 1045. State Law Preemption Standards for Federal Savings Associations Clarified

Amends the Home Owners' Loan Act to establish State law preemption standards for Federal savings associations and their subsidiaries, including prohibiting discrimination against Federal savings associations.

Section-by-Section Summary

Section 1046. Visitorial Standards for National Banks and Savings Associations

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

Section 1047. Clarification of Law Applicable to Non-Depository Institutions Subsidiaries

Clarifies that State law applies to State-chartered nondepository institution subsidiaries and affiliates of Federal savings associations.

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

Section 1053. Hearings and Adjudication Proceedings

Authorizes the CFPA 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 the CFPA to commence a civil action against a person who violates a provision of this title, enumerated consumer law or any 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 CFPA to transmit evidence of conduct that may constitute a violation of Federal criminal law to the Attorney General.

Section 1057. Employee Protections

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

Section 1058. Effective Date

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

Section-by-Section Summary

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 CFPA subject to backstop enforcement authority.

Section 1062. Designated Transfer Date

Identifies the date of transfer of functions to the CFPA as between 6 and 18 months after the date of enactment of this title and subject to a six month extension. The transfer of functions must be complete 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 CFPA and establishes employment and pay protection for two years and benefits.

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 CFPA under this Title until three of the appointed Board members hold office in accordance with section 1012 (Subtitle A). This section authorizes to be appropriated such sums as are necessary to carry out this section.

Subtitle G. Regulatory Improvements

Section 1071. Collection of Deposit Account Data

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

Section-by-Section Summary

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
Makes conforming amendments.

Section 1084. Amendments to the Community Reinvestment Act of 1977
Makes conforming amendments.

Section 1085. Amendments to the Electronic Fund Transfer Act
Makes conforming amendments.

Section 1086. Amendments to the Equal Credit Opportunity Act
Makes conforming amendments.

Section 1087. Amendments to the Expedited Funds Availability Act
Makes conforming amendments.

Section 1088. Amendments to the Fair Credit Billing Act
Makes conforming amendments.

Section 1089. Amendments to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act
Makes conforming amendments.

Section 1090. Amendments to the Fair Debt Collection Practices Act
Makes conforming amendments.

Section 1091. Amendments to the Federal Deposit Insurance Act
Makes conforming amendments.

Section 1092. Amendments to the Gramm-Leach-Bliley Act
Makes conforming amendments.

Section 1093. Amendments to the Home Mortgage Disclosure Act
Makes conforming and further amendments. The amendments require new data fields to be reported to the CFPA, 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-by-Section Summary

Section 1094. Amendments to the Home Owners Protection Act of 1998
Makes conforming amendments.

Section 1095. Amendments to the Home Ownership and Equity Protection Act of 1994
Makes conforming amendments.

Section 1096. Amendments to the Omnibus Appropriations Act, 2009
Makes conforming amendments.

Section 1097. Amendments to the Real Estate Settlement Procedures Act
Makes conforming amendments.

Section 1098. Amendments to the Right to Financial Privacy Act of 1978
Makes conforming amendments.

Section 1099. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008
Makes conforming amendments.

Section 1100. Amendments to the Truth in Lending Act
Makes conforming amendments.

Section 1101. Amendments to the Truth and Savings Act
Makes conforming amendment.

Section 1102. Telemarketing and Consumer Fraud and Abuse Prevention Act
Makes conforming amendments.

Section 1103. Amendments to the Paperwork Reduction Act
Makes conforming amendments.

Section 1104. Effective Date
Provides that sections 1083 through 1103 become effective on the designated transfer date.

Section-by-Section Summary

Title XI – Financial Regulatory Agencies Transition Oversight Commission

Section 1151. Financial Regulatory Agencies Transition Oversight Commission.
This section establishes a Financial Regulatory Agencies Transition Oversight Commission.

Subsection (a). Definitions.

This subsection defines key terms such as "new agency."

Subsection (b). In General.

This subsection provides that the purpose of the Commission is to ensure that the new agencies established by this Act have an orderly and organized start up, attract and retain a qualified workforce, and establish comprehensive training and benefits programs.

Subsection (c). Membership.

This subsection sets forth the composition and membership requirements for the Commission.

Subsection (d). Responsibilities of the Oversight Commission.

This subsection describes the various responsibilities of the Commission, including, to oversee the transition of responsibilities and employees to the new agencies, and to review and approve the training, workforce development, workforce flexibility, and recruitment and retention plans of the new agencies.

Subsection (e). Oversight Commission Personnel Matters.

This subsection addresses various Commission personnel matters, such as the appointment of personnel, the detail of government employees and the procurement of temporary services.

Subsection (f). Administrative Matters.

This subsection addresses various administrative matters, such as the powers of the chairperson of the Commission, the frequency of meetings, a study that the Commission must submit to Congress annually.

Subsection (g). Termination of the Oversight Commission.

This subsection terminates the Commission 3 years after the date of enactment of this Act.

Section-by-Section Summary

Title XII – Federal Reserve Provisions

Section 1201. Federal Reserve Act Amendment on Emergency Lending Authority

This section amends Section 13(3) of the Federal Reserve Act which governs emergency lending. The Board of Governors is authorized to lend to "financial utilities or payment, clearing or settlement activities that the Agency for Financial Stability determines are, or are likely to become, systemically important, or any program or facility with broad-based participation." 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. Identities of recipients of emergency lending may be withheld for 1 year.

Section 1202. Selection of Boards of Directors of Federal Reserve Banks

This section amends Section 4 of the Federal Reserve Act, which determines the governance structure of the 12 Federal Reserve Banks. The 3 class A directors of each Federal Reserve Bank will be appointed by the Board of Governors of the Federal Reserve. The 3 class B directors, and 2 of the 3 class C directors, will be appointed by the Board of Governors. The remaining class C director will be appointed by the President, and will serve as chair of the respective Reserve Bank Board of Directors. The chair will have expertise in "economic policy, business, banking, or financial markets." The Board of Governors is required to establish a public process for soliciting comments relating to the selection of class B and C directors.

Section 1203. 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. There is delayed disclosure of recipient identities for 1 year.

Section 1204. 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 1203 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 1201 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.