

ADDITIONAL PROPOSED AMENDMENTS TO TITLE IX

Strike section 913 and insert the following new sections (and redesignate succeeding sections and conform the table of contents accordingly):

1 **SEC. 913. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
2 **BROKERS, DEALERS, AND INVESTMENT AD-**
3 **VISERS, AND HARMONIZATION OF REGULA-**
4 **TION.**

5 (a) IN GENERAL.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
7 tion 15 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o) is further amended by adding at the
9 end the following new subsections:

10 “(m) STANDARD OF CONDUCT.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this Act or the Investment Advisers Act
13 of 1940, the Commission shall promulgate rules to
14 provide that, with respect to a broker or dealer,
15 when providing personalized investment advice about
16 securities to a retail customer (and such other cus-
17 tomers as the Commission may by rule provide), the

1 standard of conduct for such broker or dealer with
2 respect to such customer shall be the same as the
3 standard of conduct applicable to an investment ad-
4 viser under section 211 of the Investment Advisers
5 Act of 1940. The receipt of compensation based on
6 commission or other standard compensation for the
7 sale of securities shall not, in and of itself, be con-
8 sidered a violation of such standard applied to a
9 broker or dealer. Nothing in this section shall re-
10 quire a broker or dealer or registered representative
11 to have a continuing duty of care or loyalty to the
12 customer after providing personalized investment ad-
13 vice about securities.

14 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
15 FERED.—Where a broker or dealer sells only propri-
16 etary or other limited range of products, as deter-
17 mined by the Commission, the Commission shall by
18 rule require that such broker or dealer provide no-
19 tice to each retail customer and obtain the consent
20 or acknowledgment of the customer. The sale of only
21 proprietary or other limited range of products by a
22 broker or dealer shall not, in and of itself, be consid-
23 ered a violation of the standard set forth in para-
24 graph (1).

1 “(3) RETAIL CUSTOMER DEFINED.—For pur-
2 poses of this subsection, the term ‘retail customer’
3 means a natural person, or the legal representative
4 of such natural person, who—

5 “(A) receives personalized investment ad-
6 vice about securities from a broker or dealer;
7 and

8 “(B) uses such advice primarily for per-
9 sonal, family, or household purposes.

10 “(n) OTHER MATTERS.—The Commission shall—

11 “(1) facilitate the provision of simple and clear
12 disclosures to investors regarding the terms of their
13 relationships with brokers, dealers, and investment
14 advisers, including any material conflicts of interest;
15 and

16 “(2) examine and, where appropriate, promul-
17 gate rules prohibiting or restricting certain sales
18 practices, conflicts of interest, and compensation
19 schemes for brokers, dealers, and investment advis-
20 ers that the Commission deems contrary to the pub-
21 lic interest and the protection of investors.”.

22 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
23 tion 211 of the Investment Advisers Act of 1940, is
24 further amended by adding at the end the following
25 new subsections:

1 “(g) STANDARD OF CONDUCT.—

2 “(1) IN GENERAL.—The Commission shall pro-
3 mulgate rules to provide that the standard of con-
4 duct for all brokers, dealers, and investment advis-
5 ers, when providing personalized investment advice
6 about securities to retail customers (and such other
7 customers as the Commission may by rule provide),
8 shall be to act in the best interest of the customer
9 without regard to the financial or other interest of
10 the broker, dealer, or investment adviser providing
11 the advice. In accordance with such rules, any mate-
12 rial conflicts of interest shall be disclosed and may
13 be consented to by the customer. Such rules shall
14 provide that such standard of conduct shall be no
15 less stringent than the standard applicable to invest-
16 ment advisers under section 206(1) and (2) of this
17 Act when providing personalized investment advice
18 about securities, except the Commission shall not as-
19 cribe a meaning to the term ‘customer’ that would
20 include an investor in a private fund managed by an
21 investment adviser, where such private fund has en-
22 tered into an advisory contract with such adviser.
23 The receipt of compensation based on commission or
24 fees shall not, in and of itself, be considered a viola-

1 tion of such standard applied to a broker, dealer, or
2 investment adviser.

3 “(2) RETAIL CUSTOMER DEFINED.—For pur-
4 poses of this subsection, the term ‘retail customer’
5 means a natural person, or the legal representative
6 of such natural person, who—

7 “(A) receives personalized investment ad-
8 vice about securities from a broker, dealer, or
9 investment adviser; and

10 “(B) uses such advice primarily for per-
11 sonal, family, or household purposes.

12 “(h) OTHER MATTERS.—The Commission shall—

13 “(1) facilitate the provision of simple and clear
14 disclosures to investors regarding the terms of their
15 relationships with brokers, dealers, and investment
16 advisers, including any material conflicts of interest;
17 and

18 “(2) examine and, where appropriate, promul-
19 gate rules prohibiting or restricting certain sales
20 practices, conflicts of interest, and compensation
21 schemes for brokers, dealers, and investment advis-
22 ers that the Commission deems contrary to the pub-
23 lic interest and the protection of investors.”.

24 (b) HARMONIZATION OF ENFORCEMENT.—

1 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
2 tion 15 of the Securities Exchange Act of 1934, as
3 amended by subsection (a)(1), is further amended by
4 adding at the end the following new subsection:

5 “(o) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to a broker
8 or dealer providing personalized investment advice about
9 securities to a retail customer shall include—

10 “(1) the enforcement authority of the Commis-
11 sion with respect to such violations provided under
12 this Act; and

13 “(2) the enforcement authority of the Commis-
14 sion with respect to violations of the standard of
15 conduct applicable to an investment advisor under
16 the Investment Advisers Act of 1940, including the
17 authority to impose sanctions for such violations,
18 and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to a broker or
21 dealer providing personalized investment advice about se-
22 curities to a retail customer under this Act to same extent
23 as the Commission prosecutes and sanctions violators of
24 the standard of conduct applicable to an investment advi-
25 sor under the Investment Advisers Act of 1940.”.

1 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
2 tion 211 of the Investment Advisers Act of 1940, as
3 amended by subsection (a)(2), is further amended by
4 adding at the end the following new subsection:

5 “(i) HARMONIZATION OF ENFORCEMENT.—The en-
6 forcement authority of the Commission with respect to vio-
7 lations of the standard of conduct applicable to an invest-
8 ment adviser shall include—

9 “(1) the enforcement authority of the Commis-
10 sion with respect to such violations provided under
11 this Act; and

12 “(2) the enforcement authority of the Commis-
13 sion with respect to violations of the standard of
14 conduct applicable to a broker or dealer providing
15 personalized investment advice about securities to a
16 retail customer under the Securities Exchange Act
17 of 1934, including the authority to impose sanctions
18 for such violations, and

19 the Commission shall seek to prosecute and sanction viola-
20 tors of the standard of conduct applicable to an invest-
21 ment advisor under this Act to same extent as the Com-
22 mission prosecutes and sanctions violators of the standard
23 of conduct applicable to a broker or dealer providing per-
24 sonalized investment advice about securities to a retail
25 customer under the Securities Exchange Act of 1934.”.

1 **SEC. 914. STUDY ON ENHANCING INVESTMENT ADVISER EX-**
2 **AMINATIONS.**

3 (a) STUDY REQUIRED.—

4 (1) IN GENERAL.—The Commission shall review
5 and analyze the need for enhanced examination and
6 enforcement resources for investment advisers.

7 (2) AREAS OF CONSIDERATION.—The study re-
8 quired by this subsection shall examine—

9 (A) the number and frequency of examina-
10 tions of investment advisers by the Commission
11 over the 5 years preceding the date of the en-
12 actment of this subtitle;

13 (B) the extent to which having Congress
14 authorize the Commission to designate one or
15 more self-regulatory organizations to augment
16 the Commission's efforts in overseeing invest-
17 ment advisers would improve the frequency of
18 examinations of investment advisers; and

19 (C) current and potential approaches to ex-
20 amining the investment advisory activities of
21 dually registered broker-dealers and investment
22 advisers or affiliated broker-dealers and invest-
23 ment advisers.

24 (b) REPORT REQUIRED.—The Commission shall re-
25 port its findings to the Committee on Financial Services
26 of the House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of the Senate, not
2 later than 180 days after the date of enactment of this
3 subtitle, and shall use such findings to revise its rules and
4 regulations, as necessary. The report shall include a dis-
5 cussion of regulatory or legislative steps that are rec-
6 ommended or that may be necessary to address concerns
7 identified in the study.

Page 1061, beginning on line 15, strike “equal to the highest” and insert “comparable to the”.

Page 1061, beginning on line 16, strike “a Senior Executive Service position” and insert “other senior executive positions”.

Page 1067, line 10, insert “or disapprove” after “approve”.

Page 1068, line 6, insert “or disapprove” after “approve”.

Page 1068, line 7, insert “and instead institute proceedings to determine whether the proposed rule change should be disapproved,” after “subparagraph (A)”.

Page 1068, beginning on line 15, strike “after the date” and all that follows through the end of line 17 and insert “after the date of receipt of a proper filing.”.

Page 1068, beginning on line 22, strike “after the date” and all that follows through “paragraph (1)” and insert “after the date of receipt of a proper filing.”.

Page 1070, line 17, strike “the proposed rule change” and insert “or disapprove the proposed rule change,”.

Page 1070, line 18, insert a comma after “subparagraph (B)”.

Page 1075, line 1, strike “the Commission shall” and insert “the Commission may either, by order, disapprove the proposed rule change or”.

Page 1076, line 4, strike “shall” and insert “may either, by order, disapprove the proposed rule change or”.

Page 1089, line 13, strike “exclusively derived from” and insert “based on”.

Page 1090, line 7, insert “covered” after “with respect to any”.

Page 1090, beginning on line 13, strike “pursuant to subsection (a) that led to” and insert “that significantly contributed to”.

Page 1091, line 4, strike “led to” and insert “significantly contributed to”.

Page 1091, line 9, strike “action or related actions” and insert “covered judicial or administrative action”.

Page 1095, beginning on line 2, strike “determination made by” and all that follows through line 4, and insert “facts and circumstances set forth in the determination to ensure that the Commission did not grossly abuse its discretion. The Court shall not require the production or disclosure of any investigative or other non-public materials or records.”.

Page 1102, strike line 5 through page 1103, line 3, and insert the following (and redesignate succeeding subparagraphs accordingly):

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), the Commission
3 and any officer or employee of the Commission
4 shall not disclose any information, including in-
5 formation provided by a whistleblower to the
6 Commission, which could reasonably be ex-
7 pected to reveal the identity of a whistleblower,
8 except in accordance with the provisions of sec-
9 tion 552a of title 5, United States Code, unless
10 and until required to be disclosed to a defend-
11 ant or respondent in connection with a public
12 proceeding instituted by the Commission or any

1 entity described in subparagraph (C). For pur-
2 poses of section 552 of title 5, United States
3 Code, this paragraph shall be considered a stat-
4 ute described in subsection (b)(3)(B) of such
5 section.”.

Page 1135, beginning on line 2, strike “issues an audit report, performs audit work, conducts interim reviews, or”.

Page 1135, line 6, insert “issues an audit report, performs audit work, or conducts interim reviews,” after “review,”.

Page 1135, line 8, strike “its audit work papers” and insert “the audit work papers of the foreign public accounting firm”.

Page 1135, line 9, insert “of the firm” after “documents”.

Page 1135, line 11, insert “, upon request of the Commission or the Board” after “Board”.

Page 1136, line 17, insert “any request by the Commission or the Board under this section or upon whom may be served” after “served”.

Page 1136, line 21, insert “performs material services upon which a registered public accounting firm relies

in the conduct of an audit or interim review” after “that”.

Page 1136, line 22, insert “or,” after “work,”.

Page 1136, beginning on line 22, strike “or performs material” and all that follows through “interim review,” on line 25.

Page 1137, line 2, insert “any request by the Commission or the Board under this section or upon whom may be served” after “be served”.

Page 1137, beginning on line 4, strike “any request by the Commission or the Board under this section”.

Page 1142, line 1, insert “or recklessly” after “knowingly”.

Page 1142, line 14, insert “or recklessly” after “knowingly”.

Page 1143, line 3, insert “or recklessly” after “knowingly”.

Page 1143, after line 8, insert the following new sections (and conform the table of contents accordingly):

1 **SEC. 9290. AIDING AND ABETTING STANDARD OF KNOWL-**
2 **EDGE SATISFIED BY RECKLESSNESS.**

3 Section 20(e) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly”
5 after “knowingly”.

6 **SEC. 929P. STRENGTHENING ENFORCEMENT BY THE COM-**
7 **MISSION.**

8 (a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN
9 CEASE AND DESIST PROCEEDINGS.—

10 (1) UNDER THE SECURITIES ACT OF 1933.—

11 Section 8A of the Securities Act of 1933 (15 U.S.C.
12 77h–1) is amended by adding at the end the fol-
13 lowing new subsection:

14 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

15 “(1) GROUNDS.—In any cease-and-desist pro-
16 ceeding under subsection (a), the Commission may
17 impose a civil penalty on a person if the Commission
18 finds, on the record, after notice and opportunity for
19 hearing, that—

20 “(A) such person—

21 “(i) is violating or has violated any
22 provision of this title, or any rule or regu-
23 lation issued under this title; or

24 “(ii) is or was a cause of the violation
25 of any provision of this title, or any rule or
26 regulation thereunder; and

1 “(B) such penalty is in the public interest.

2 “(2) MAXIMUM AMOUNT OF PENALTY.—

3 “(A) FIRST TIER.—The maximum amount
4 of a penalty for each act or omission described
5 in paragraph (1) shall be \$7,500 for a natural
6 person or \$75,000 for any other person.

7 “(B) SECOND TIER.—Notwithstanding
8 subparagraph (A), the maximum amount of
9 penalty for each such act or omission shall be
10 \$75,000 for a natural person or \$375,000 for
11 any other person, if the act or omission de-
12 scribed in paragraph (1) involved fraud, deceit,
13 manipulation, or deliberate or reckless dis-
14 regard of a regulatory requirement.

15 “(C) THIRD TIER.—Notwithstanding sub-
16 paragraphs (A) and (B), the maximum amount
17 of penalty for each such act or omission shall
18 be \$150,000 for a natural person or \$725,000
19 for any other person, if—

20 “(i) the act or omission described in
21 paragraph (1) involved fraud, deceit, ma-
22 nipulation, or deliberate or reckless dis-
23 regard of a regulatory requirement; and

24 “(ii) such act or omission directly or
25 indirectly resulted in—

1 “(I) substantial losses or created
2 a significant risk of substantial losses
3 to other persons; or

4 “(II) substantial pecuniary gain
5 to the person who committed the act
6 or omission.

7 “(3) EVIDENCE CONCERNING ABILITY TO
8 PAY.—In any proceeding in which the Commission
9 may impose a penalty under this section, a respondent
10 may present evidence of the ability of the respondent
11 to pay such penalty. The Commission may,
12 in its discretion, consider such evidence in determining
13 whether such penalty is in the public interest. Such evidence
14 may relate to the extent of the ability of the respondent to
15 continue in business and the collectability of a penalty, taking
16 into account any other claims of the United States or third
17 parties upon the assets of the respondent and the amount of the
18 assets of the respondent.”.

20 (2) UNDER THE SECURITIES EXCHANGE ACT
21 OF 1934.—Section 21B(a) of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78u–2(a)) is amended—
23 ed—

24 (A) by striking the matter following paragraph
25 graph (4);

1 (B) in the matter preceding paragraph (1),
2 by inserting after “opportunity for hearing,”
3 the following: “that such penalty is in the pub-
4 lic interest and”;

5 (C) by redesignating paragraphs (1)
6 through (4) as subparagraphs (A) through (D),
7 respectively, and adjusting the margins accord-
8 ingly;

9 (D) by striking “In any proceeding” and
10 inserting the following:

11 “(1) IN GENERAL.—In any proceeding”; and

12 (E) by adding at the end the following:

13 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
14 any proceeding instituted under section 21C against
15 any person, the Commission may impose a civil pen-
16 alty, if the Commission finds, on the record after no-
17 tice and opportunity for hearing, that such person—

18 “(A) is violating or has violated any provi-
19 sion of this title, or any rule or regulation
20 issued under this title; or

21 “(B) is or was a cause of the violation of
22 any provision of this title, or any rule or regula-
23 tion issued under this title.”.

1 (3) UNDER THE INVESTMENT COMPANY ACT OF
2 1940.—Section 9(d)(1) of the Investment Company
3 Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

4 (A) by striking the matter following sub-
5 paragraph (C);

6 (B) in the matter preceding subparagraph
7 (A), by inserting after “opportunity for hear-
8 ing,” the following: “that such penalty is in the
9 public interest, and”;

10 (C) by redesignating subparagraphs (A)
11 through (C) as clauses (i) through (iii), respec-
12 tively, and adjusting the margins accordingly;

13 (D) by striking “In any proceeding” and
14 inserting the following:

15 “(A) IN GENERAL.—In any proceeding”;
16 and

17 (E) by adding at the end the following:

18 “(B) CEASE-AND-DESIST PROCEEDINGS.—
19 In any proceeding instituted pursuant to sub-
20 section (f) against any person, the Commission
21 may impose a civil penalty if the Commission
22 finds, on the record, after notice and oppor-
23 tunity for hearing, that such person—

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regu-
3 lation issued under this title; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation issued under this title.”.

7 (4) UNDER THE INVESTMENT ADVISERS ACT OF
8 1940.—Section 203(i)(1) of the Investment Advisers
9 Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

10 (A) by striking the matter following sub-
11 paragraph (D);

12 (B) in the matter preceding subparagraph
13 (A), by inserting after “opportunity for hear-
14 ing,” the following: “that such penalty is in the
15 public interest and”;

16 (C) by redesignating subparagraphs (A)
17 through (D) as clauses (i) through (iv), respec-
18 tively, and adjusting the margins accordingly;

19 (D) by striking “In any proceeding” and
20 inserting the following:

21 “(A) IN GENERAL.—In any proceeding”;
22 and

23 (E) by adding at the end the following new
24 subparagraph:

1 “(B) CEASE-AND-DESIST PROCEEDINGS.—

2 In any proceeding instituted pursuant to sub-
3 section (k) against any person, the Commission
4 may impose a civil penalty if the Commission
5 finds, on the record, after notice and oppor-
6 tunity for hearing, that such person—

7 “(i) is violating or has violated any
8 provision of this title, or any rule or regu-
9 lation issued under this title; or

10 “(ii) is or was a cause of the violation
11 of any provision of this title, or any rule or
12 regulation issued under this title.”.

13 (b) EXTRATERRITORIAL JURISDICTION OF THE
14 ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES
15 LAWS.—

16 (1) UNDER THE SECURITIES ACT OF 1933.—
17 Section 22 of the Securities Act of 1933 (15 U.S.C.
18 77v(a)) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(c) EXTRATERRITORIAL JURISDICTION.—The dis-
21 trict courts of the United States and the United States
22 courts of any Territory shall have jurisdiction of an action
23 or proceeding brought or instituted by the Commission or
24 the United States alleging a violation of section 17(a) in-
25 volving—

1 “(1) conduct within the United States that con-
2 stitutes significant steps in furtherance of the viola-
3 tion, even if the securities transaction occurs outside
4 the United States and involves only foreign inves-
5 tors; or

6 “(2) conduct occurring outside the United
7 States that has a foreseeable substantial effect with-
8 in the United States.”.

9 (2) UNDER THE SECURITIES EXCHANGE ACT
10 OF 1934.—Section 27 of the Securities Exchange Act
11 of 1934 (15 U.S.C. 78aa) is amended—

12 (A) by striking “The district” and insert-
13 ing the following:

14 “(a) IN GENERAL.—The district”; and

15 (B) by adding at the end the following new
16 subsection:

17 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-
18 trict courts of the United States and the United States
19 courts of any Territory shall have jurisdiction of an action
20 or proceeding brought or instituted by the Commission or
21 the United States alleging a violation of the antifraud pro-
22 visions of this title involving—

23 “(1) conduct within the United States that con-
24 stitutes significant steps in furtherance of the viola-
25 tion, even if the securities transaction occurs outside

1 the United States and involves only foreign inves-
2 tors; or

3 “(2) conduct occurring outside the United
4 States that has a foreseeable substantial effect with-
5 in the United States.”.

6 (3) UNDER THE INVESTMENT ADVISERS ACT OF
7 1940.—Section 214 of the Investment Advisers Act
8 of 1940 (15 U.S.C. 80b–14) is amended—

9 (A) by striking “The district” and insert-
10 ing the following:

11 “(a) IN GENERAL.—The district”; and

12 (B) by adding at the end the following new
13 subsection:

14 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-
15 trict courts of the United States and the United States
16 courts of any Territory shall have jurisdiction of an action
17 or proceeding brought or instituted by the Commission or
18 the United States alleging a violation of section 206 in-
19 volving—

20 “(1) conduct within the United States that con-
21 stitutes significant steps in furtherance of the viola-
22 tion, even if the violation is committed by a foreign
23 adviser and involves only foreign investors; or

1 “(2) conduct occurring outside the United
2 States that has a foreseeable substantial effect with-
3 in the United States.”.

4 (c) CONTROL PERSON LIABILITY UNDER THE SECU-
5 RITIES EXCHANGE ACT OF 1934.—Section 20(a) of the
6 Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is
7 amended by inserting after “controlled person is liable”
8 the following: “(including to the Commission in any action
9 brought under paragraph (1) or (3) of section 21(d))”.

10 **SEC. 929Q. REVISION TO RECORDKEEPING RULE.**

11 (a) INVESTMENT COMPANY ACT OF 1940 AMEND-
12 MENTS.—Section 31 of the Investment Company Act of
13 1940 (15 U.S.C. 80a–30) is amended—

14 (1) in subsection (a)(1), by adding at the end
15 the following: “Each person having custody or use of
16 the securities, deposits, or credits of a registered in-
17 vestment company shall maintain and preserve all
18 records that relate to the custody or use by such
19 person of the securities, deposits, or credits of the
20 registered investment company for such period or
21 periods as the Commission, by rule or regulation,
22 may prescribe, as necessary or appropriate in the
23 public interest or for the protection of investors.”;
24 and

1 (2) in subsection (b), by adding at the end the
2 following:

3 “(4) RECORDS OF PERSONS WITH CUSTODY OR
4 USE.—

5 “(A) IN GENERAL.—Records of persons
6 having custody or use of the securities, depos-
7 its, or credits of a registered investment com-
8 pany that relate to such custody or use, are
9 subject at any time, or from time to time, to
10 such reasonable periodic, special, or other ex-
11 aminations and other information and docu-
12 ment requests by representatives of the Com-
13 mission, as the Commission deems necessary or
14 appropriate in the public interest or for the pro-
15 tection of investors.

16 “(B) CERTAIN PERSONS SUBJECT TO
17 OTHER REGULATION.—Any person that is sub-
18 ject to regulation and examination by a Federal
19 financial institution regulatory agency (as such
20 term is defined under section 212(c)(2) of title
21 18, United States Code) may satisfy any exam-
22 ination request, information request, or docu-
23 ment request described under subparagraph
24 (A), by providing to the Commission a detailed
25 listing, in writing, of the securities, deposits, or

1 credits of the registered investment company
2 within the custody or use of such person.”.

3 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
4 MENT.—Section 204 of the Investment Advisers Act of
5 1940 (15 U.S.C. 80b–4) is amended by adding at the end
6 the following new subsection:

7 “(d) RECORDS OF PERSONS WITH CUSTODY OR
8 USE.—

9 “(1) IN GENERAL.—Records of persons having
10 custody or use of the securities, deposits, or credits
11 of a client, that relate to such custody or use, are
12 subject at any time, or from time to time, to such
13 reasonable periodic, special, or other examinations
14 and other information and document requests by
15 representatives of the Commission, as the Commis-
16 sion deems necessary or appropriate in the public in-
17 terest or for the protection of investors.

18 “(2) CERTAIN PERSONS SUBJECT TO OTHER
19 REGULATION.—Any person that is subject to regula-
20 tion and examination by a Federal financial institu-
21 tion regulatory agency (as such term is defined
22 under section 212(c)(2) of title 18, United States
23 Code) may satisfy any examination request, informa-
24 tion request, or document request described under
25 paragraph (1), by providing the Commission with a

1 detailed listing, in writing, of the securities, deposits,
2 or credits of the client within the custody or use of
3 such person.”.

4 **SEC. 929R. ENHANCED ABILITY OF COMMISSION TO OBTAIN**
5 **NEEDED INFORMATION.**

6 (a) INVESTMENT COMPANY EXAMINATION.—Section
7 31(b)(1) of the Investment Company Act of 1940 (15
8 U.S.C. 80a–30(b)(1)) is amended to read as follows:

9 “(1) IN GENERAL.—The following records shall
10 be subject, at any time, or from time to time, to
11 such reasonable periodic, special, or other examina-
12 tions by representatives of the Commission as the
13 Commission deems necessary or appropriate in the
14 public interest or for the protection of investors:

15 “(A) All records of a registered investment
16 company.

17 “(B) All records of a underwriter, broker,
18 dealer, or investment adviser that is a majority-
19 owned subsidiary of a registered investment
20 company.

21 “(C) All records required to be maintained
22 and preserved by a investment adviser that is
23 not a majority-owned subsidiary of a registered
24 investment company.

1 “(D) All records required to be maintained
2 and preserved by a depositor of a registered in-
3 vestment company.

4 “(E) All records required to be maintained
5 and preserved by a principal underwriter for a
6 registered investment company (other than a
7 closed-end company).”.

8 (b) ENHANCED AUTHORITY OF THE SECURITIES AND
9 EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE
10 AND RISK ASSESSMENT.—

11 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
12 tion 17(b) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78q(b)) is amended by adding at the end
14 the following:

15 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
16 All persons described in subsection (a) are subject,
17 at any time, or from time to time, to such reason-
18 able periodic, special, or other information and docu-
19 ment requests by representatives of the Commission
20 as the Commission, by rule or order, deems nec-
21 essary or appropriate to conduct surveillance or risk
22 assessments of the securities markets, persons reg-
23 istered with the Commission under this title, or oth-
24 erwise in furtherance of the purposes of this title.”.

1 (2) INVESTMENT COMPANY ACT OF 1940.—Sec-
2 tion 31(b) of the Investment Company Act of 1940
3 (15 U.S.C. 80a–30(b)) is amended by adding at the
4 end the following:

5 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
6 All persons described in subsection (a) are subject at
7 any time, or from time to time, to such reasonable
8 periodic, special, or other information and document
9 requests by representatives of the Commission as the
10 Commission, by rule or order, deems necessary or
11 appropriate to conduct surveillance or risk assess-
12 ments of the securities markets, persons registered
13 with the Commission under this title, or otherwise in
14 furtherance of the purposes of this title.”.

15 (3) DOCUMENT REQUESTS.—Section 204 of the
16 Investment Advisers Act of 1940 (15 U.S.C. 80b–4)
17 is amended by adding at the end the following:

18 “(e) SURVEILLANCE AND RISK ASSESSMENT.—All
19 persons described in subsection (a) are subject at any
20 time, or from time to time, to such reasonable periodic,
21 special, or other information and document requests by
22 representatives of the Commission as the Commission, by
23 rule or order, deems necessary or appropriate to conduct
24 surveillance or risk assessments of the securities markets,

1 persons registered with the Commission under this title,
2 or otherwise in furtherance of the purposes of this title.”.

3 **SEC. 929S. MODERNIZATION OF INVESTOR PROTECTIONS.**

4 (a) BENEFICIAL OWNERSHIP AND SHORT-SWING
5 PROFIT REPORTING.—

6 (1) BENEFICIAL OWNERSHIP REPORTING.—Sec-
7 tion 13 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78m) is amended—

9 (A) in subsection (d)—

10 (i) in paragraph (1)—

11 (I) by inserting after “within ten
12 days after such acquisition,” the fol-
13 lowing: “or within such shorter period
14 as the Commission may establish, by
15 rule,”; and

16 (II) by striking “send to the
17 issuer of the security at its principal
18 executive office, by registered or cer-
19 tified mail, send to each exchange on
20 which the security is traded, and”;
21 and

22 (ii) in paragraph (2)—

23 (I) by striking “in the statements
24 to the issuer and the exchange, and”;
25 and

1 (II) by striking “shall be trans-
2 mitted to the issuer and the exchange
3 and”; and

4 (B) in subsection (g)—

5 (i) in paragraph (1), by striking
6 “shall send to the issuer of the security
7 and”; and

8 (ii) in paragraph (2)—

9 (I) by striking “sent to the issuer
10 and”; and

11 (II) by striking “shall be trans-
12 mitted to the issuer and”.

13 (2) SHORT-SWING PROFIT REPORTING.—Sec-
14 tion 16(a) of the Securities Exchange Act of 1934
15 (15 U.S.C. 78p(a)) is amended—

16 (A) in paragraph (1), by striking “(and, if
17 such security is registered on a national securi-
18 ties exchange, also with the exchange)”; and

19 (B) in paragraph (2)(B), by inserting after
20 “officer” the following: “, or within such short-
21 er period as the Commission may establish, by
22 rule”.

23 (c) DEFINITION OF “INTERESTED PERSON”.—Sec-
24 tion 2(a)(19)(A) of the Investment Company Act of 1940
25 (15 U.S.C. 80a-2(a)(19)(A)) is amended—

1 (1) in clause (vii), by striking the colon at the
2 end and inserting a comma;

3 (2) by inserting before “*Provided*,” the fol-
4 lowing:

5 “(viii) any natural person who is a
6 member of a class of persons who the
7 Commission, by rule or regulation, deter-
8 mines are unlikely to exercise an appro-
9 priate degree of independence as a result
10 of—

11 “(I) a material business or pro-
12 fessional relationship with such com-
13 pany or any affiliated person of such
14 company; or

15 “(II) a close familial relationship
16 with any natural person who is an af-
17 filiated person of such company.”; and

18 (3) in clause (vii), by striking “two” and insert-
19 ing “5”.

20 (e) FINGERPRINTING.—Section 17(f)(2) of the Secu-
21 rities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is
22 amended—

23 (1) in the first sentence, by striking “and reg-
24 istered clearing agency,” and inserting “registered
25 clearing agency, registered securities information

1 processor, national securities exchange, and national
2 securities association”; and

3 (2) in the second sentence, by striking “or
4 clearing agency,” and inserting “clearing agency, se-
5 curities information processor, national securities ex-
6 change, or national securities association,”.

7 **SEC. 929T. EQUAL TREATMENT OF SELF-REGULATORY OR-**
8 **GANIZATION RULES.**

9 Section 29(a) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
11 required thereby” and inserting “a self-regulatory organi-
12 zation,”.

13 **SEC. 929U. DEADLINE FOR COMPLETING EXAMINATIONS,**
14 **INSPECTIONS AND ENFORCEMENT ACTIONS.**

15 The Securities Exchange Act of 1934 (15 U.S.C. 78a
16 et seq.) is amended by inserting after section 4D (as added
17 by section 7101) the following new section:

18 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
19 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
20 **TIONS AND INSPECTIONS.**

21 **“(a) ENFORCEMENT INVESTIGATIONS.—**

22 **“(1) IN GENERAL.—**Not later than 180 days
23 after the date on which Commission staff provide a
24 written Wells notification to any person, the Com-
25 mission staff shall either file an action against such

1 person or provide notice to the Director of the Divi-
2 sion of Enforcement of its intent to not file an ac-
3 tion.

4 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
5 TIONS.—Notwithstanding paragraph (1), if the Di-
6 rector of the Division of Enforcement of the Com-
7 mission or the Director’s designee determines that a
8 particular enforcement investigation is sufficiently
9 complex such that a determination regarding the fil-
10 ing of an action against a person cannot be com-
11 pleted within the deadline specified in paragraph (1),
12 the Director of the Division of Enforcement of the
13 Commission or the Director’s designee may, after
14 providing notice to the Chairman of the Commission,
15 extend such deadline as needed for one additional
16 180-day period. If after the additional 180-day pe-
17 riod the Director of the Division of Enforcement of
18 the Commission or the Director’s designee deter-
19 mines that a particular enforcement investigation is
20 sufficiently complex such that a determination re-
21 garding the filing of an action against a person can-
22 not be completed within the additional 180-day pe-
23 riod, the Director of the Division of Enforcement of
24 the Commission or the Director’s designee may,
25 after providing notice to and receiving approval of

1 the Commission, extend such deadline as needed for
2 one or more additional successive 180-day periods.

3 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
4 TIONS.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date on which Commission staff completes
7 the on-site portion of its compliance examination or
8 inspection or receives all records requested from the
9 entity being examined or inspected, whichever is
10 later, Commission staff shall provide the entity being
11 examined or inspected with written notification indi-
12 cating either that the examination or inspection has
13 concluded, has concluded without findings, or that
14 the staff requests the entity undertake corrective ac-
15 tion.

16 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
17 TIONS.—Notwithstanding paragraph (1), if the head
18 of any division or office within the Commission re-
19 sponsible for compliance examinations and inspec-
20 tions or his designee determines that a particular
21 compliance examination or inspection is sufficiently
22 complex such that a determination regarding con-
23 cluding the examination or inspection, or regarding
24 the staff requests the entity undertake corrective ac-
25 tion, cannot be completed within the deadline speci-

1 fied in paragraph (1), the head of any division or of-
2 fice within the Commission responsible for compli-
3 ance examinations and inspections or his designee
4 may, after providing notice to the Chairman of the
5 Commission, extend such deadline as needed for one
6 additional 180-day period.”.

7 **SEC. 929V. SECURITY INVESTOR PROTECTION ACT AMEND-**
8 **MENTS.**

9 (a) INCREASING THE MINIMUM ASSESSMENT PAID
10 BY SIPC MEMBERS.—Section 4(d)(1)(C) of the Securities
11 Investor Protection Act of 1970 (15 U.S.C.
12 78ddd(d)(1)(C)) is amended by striking “\$150 per
13 annum” and inserting the following: “0.02 percent of the
14 gross revenues from the securities business of such mem-
15 ber of SIPC”.

16 (b) INCREASING THE FINE FOR PROHIBITED ACTS
17 UNDER SIPA.—Section 14(c) of the Securities Investor
18 Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

19 (1) in paragraph (1), by striking “\$50,000”
20 and inserting “\$250,000”; and

21 (2) in paragraph (2), by striking “\$50,000”
22 and inserting “\$250,000”.

23 (c) PENALTY FOR MISREPRESENTATION OF SIPC
24 MEMBERSHIP OR PROTECTION.—Section 14 of the Securi-
25 ties Investor Protection Act of 1970 (15 U.S.C. 78jjj) is

1 amended by adding at the end the following new sub-
2 section:

3 “(d) MISREPRESENTATION OF SIPC MEMBERSHIP
4 OR PROTECTION.—

5 “(1) IN GENERAL.—Any person who falsely
6 represents by any means (including, without limita-
7 tion, through the Internet or any other medium of
8 mass communication), with actual knowledge of the
9 falsity of the representation and with an intent to
10 deceive or cause injury to another, that such person,
11 or another person, is a member of SIPC or that any
12 person or account is protected or is eligible for pro-
13 tection under this Act or by SIPC, shall be liable for
14 any damages caused thereby and shall be fined not
15 more than \$250,000 or imprisoned for not more
16 than 5 years.

17 “(2) INJUNCTIONS.—Any court having jurisdic-
18 tion of a civil action arising under this Act may
19 grant temporary injunctions and final injunctions on
20 such terms as the court deems reasonable to prevent
21 or restrain any violation of paragraph (1). Any such
22 injunction may be served anywhere in the United
23 States on the person enjoined, shall be operative
24 throughout the United States, and shall be enforce-
25 able, by proceedings in contempt or otherwise, by

1 any United States court having jurisdiction over that
2 person. The clerk of the court granting the injunc-
3 tion shall, when requested by any other court in
4 which enforcement of the injunction is sought, trans-
5 mit promptly to the other court a certified copy of
6 all papers in the case on file in such clerk's office.”.

7 **SEC. 929W. NOTICE TO MISSING SECURITY HOLDERS.**

8 Section 17A of the Securities Exchange Act of 1934
9 (15 U.S.C. 78q–1) is amended by adding at the end the
10 following new subsection:

11 “(g) DUE DILIGENCE FOR THE DELIVERY OF DIVI-
12 DENDS, INTEREST, AND OTHER VALUABLE PROPERTY
13 RIGHTS.—

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

20 “(A) A requirement that the paying agent
21 provide a single written notification to each
22 missing security holder that the missing secu-
23 rity holder has been sent a check that has not
24 yet been negotiated. The written notification
25 may be sent along with a check or other mailing

1 subsequently sent to the missing security holder
2 but must be provided no later than 7 months
3 after the sending of the not yet negotiated
4 check.

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

8 “(C) A provision clarifying that the re-
9 quirements described in subparagraph (A) shall
10 have no effect on State escheatment laws.

11 “(D) For purposes of such revised regula-
12 tions—

13 “(i) a security holder shall be consid-
14 ered a ‘missing security holder’ if a check
15 is sent to the security holder and the check
16 is not negotiated before the earlier of the
17 paying agent sending the next regularly
18 scheduled check or the elapsing of 6
19 months after the sending of the not yet ne-
20 gotiated check; and

21 “(ii) the term ‘paying agent’ includes
22 any issuer, transfer agent, broker, dealer,
23 investment adviser, indenture trustee, cus-
24 todian, or any other person that accepts
25 payments from the issuer of a security and

1 distributes the payments to the holders of
2 the security.

3 “(2) RULEMAKING.—The Commission shall
4 adopt such rules, regulations, and orders necessary
5 to implement this subsection no later than 1 year
6 after the date of enactment of this subsection. In
7 proposing such rules, the Commission shall seek to
8 minimize disruptions to current systems used by or
9 on behalf of paying agents to process payment to ac-
10 count holders and avoid requiring multiple paying
11 agents to send written notification to a missing secu-
12 rity holder regarding the same not yet negotiated
13 check.”.

14 **SEC. 929X. SHORT SALE REFORMS.**

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

20 “(2)(A) Every institutional investment manager
21 that effects a short sale of an equity security shall
22 also file a report on a daily basis with the Commis-
23 sion in such form as the Commission, by rule, may
24 prescribe. Such report shall include, as applicable,
25 the name of the institution, the name of the institu-

1 tional investment manager and the title, class,
2 CUSIP number, number of shares or principal
3 amount, aggregate fair market value of each secu-
4 rity, and any additional information requested by
5 the Commission. For purposes of section 552 of title
6 5, United States Code, this subparagraph shall be
7 considered a statute described in subsection
8 (b)(3)(B) of such section. The information contained
9 in reports of an institutional investment manager
10 filed with the Commission pursuant to this section,
11 shall be subject to the same non-disclosure and con-
12 fidentiality protection provided under section
13 204(b)(8) of the Investment Advisers Act of 1940.

14 “(B) The Commission shall prescribe rules pro-
15 viding for the public disclosure of the name of the
16 issuer and the title, class, CUSIP number, aggregate
17 amount of the number of short sales of each secu-
18 rity, and any additional information determined by
19 the Commission following the end of the reporting
20 period. At a minimum, such public disclosure shall
21 occur every month.”.

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

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

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

6 “(d) TRANSACTIONS RELATING TO SHORT SALES OF
7 SECURITIES.—It shall be unlawful for any person, directly
8 or indirectly, by the use of the mails or any means or in-
9 strumentality of interstate commerce, or of any facility of
10 any national securities exchange, or for any member of
11 a national securities exchange to effect, alone or with one
12 or more other persons, a manipulative short sale of any
13 security. The Commission shall issue such other rules as
14 are necessary or appropriate to ensure that the appro-
15 priate enforcement options and remedies are available for
16 violations of this subsection in the public interest or for
17 the protection of investors.”.

18 (c) INVESTOR NOTIFICATION.—Section 15 of the Se-
19 curities Exchange Act of 1934 (15 U.S.C. 78o) is amend-
20 ed—

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

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

1 “(e) NOTICES TO CUSTOMERS REGARDING SECURI-
2 TIES LENDING.—Every registered broker or dealer shall
3 provide notice to its customers that they may elect not
4 to allow their fully paid securities to be used in connection
5 with short sales. If a broker or dealer uses a customer’s
6 securities in connection with short sales, the broker or
7 dealer shall provide notice to its customer that the broker
8 or dealer may receive compensation in connection with
9 lending the customer’s securities. The Commission, by
10 rule, as it deems necessary or appropriate in the public
11 interest and for the protection of investors, may prescribe
12 the form, content, time, and manner of delivery of any
13 notice required under this paragraph.”.

Page 1253, after line 15, insert the following new
sections (and conform the table of contents accordingly):

14 **SEC. 967. COMMISSION ORGANIZATIONAL STUDY AND RE-**
15 **FORM.**

16 (a) STUDY REQUIRED.—

17 (1) IN GENERAL.—Not later than the end of
18 the 90-day period beginning on the date of the en-
19 actment of this subtitle, the Securities and Ex-
20 change Commission (hereinafter in this section re-
21 ferred to as the “SEC”) shall hire an independent
22 consultant of high caliber and with expertise in orga-
23 nizational restructuring and the operations of capital

1 markets to examine the internal operations, struc-
2 ture, funding, and the need for comprehensive re-
3 form of the SEC, as well as the SEC's relationship
4 with and the reliance on self-regulatory organiza-
5 tions and other entities relevant to the regulation of
6 securities and the protection of securities investors
7 that are under the SEC's oversight.

8 (2) SPECIFIC AREAS FOR STUDY.—The study
9 required under paragraph (1) shall, at a minimum,
10 include the study of—

11 (A) the possible elimination of unnecessary
12 or redundant units at the SEC;

13 (B) improving communications between
14 SEC offices and divisions;

15 (C) the need to put in place a clear chain-
16 of-command structure, particularly for enforce-
17 ment examinations and compliance inspections;

18 (D) the effect of high-frequency trading
19 and other technological advances on the market
20 and what the SEC requires to monitor the ef-
21 fect of such trading and advances on the mar-
22 ket;

23 (E) the SEC's hiring authorities, work-
24 place policies, and personal practices, includ-
25 ing—

1 (i) whether there is a need to further
2 streamline hiring authorities for those who
3 are not lawyers, accountants, compliance
4 examiners, or economists;

5 (ii) whether there is a need for further
6 pay reforms;

7 (iii) the diversity of skill sets of SEC
8 employees and whether the present skill set
9 diversity efficiently and effectively fosters
10 the SEC's mission of investor protection;
11 and

12 (iv) the application of civil service
13 laws by the SEC;

14 (F) whether the SEC's oversight and reli-
15 ance on self-regulatory organizations promotes
16 efficient and effective governance for the securi-
17 ties markets; and

18 (G) whether adjusting the SEC's reliance
19 on self-regulatory organizations is necessary to
20 promote more efficient and effective governance
21 for the securities markets.

22 (b) CONSULTANT REPORT.—Not later than the end
23 of the 150-day period after being retained, the inde-
24 pendent consultant hired pursuant to subsection (a)(1)

1 shall issue a report to the SEC and the Congress con-
2 taining—

3 (1) a detailed description of any findings and
4 conclusions made while carrying out the study re-
5 quired under subsection (a)(1); and

6 (2) recommendations for legislative, regulatory,
7 or administrative action that the consultant deter-
8 mines appropriate to enable the SEC and other enti-
9 ties on which it reports to perform their statutorily
10 or otherwise mandated missions.

11 (c) SEC REPORT.—Not later than the end of the 6-
12 month period beginning on the date the consultant issues
13 the report under subsection (b), and every 6-months there-
14 after during the 2-year period following the date on which
15 the consultant issues such report, the SEC shall issue a
16 report to the Committee on Financial Services of the
17 House of Representatives and the Committee on Banking,
18 Housing, and Urban Affairs of the Senate describing the
19 SEC's implementation of the regulatory and administra-
20 tive recommendations contained in the consultant's report.

21 **SEC. 968. STUDY ON SEC REVOLVING DOOR.**

22 (a) GOVERNMENT ACCOUNTABILITY OFFICE
23 STUDY.—The Comptroller General of the United States
24 shall conduct a study that will—

1 (1) review the number of employees who leave
2 the Securities and Exchange Commission to work
3 for financial institutions regulated by such Commis-
4 sion;

5 (2) determine how many employees who leave
6 the Securities and Exchange Commission worked on
7 cases that involved financial institutions regulated by
8 such Commission;

9 (3) review the length of time employees work
10 for the Securities and Exchange Commission before
11 leaving to be employed by financial institutions regu-
12 lated by such Commission;

13 (4) review existing internal controls and make
14 recommendations on strengthening such controls to
15 ensure that employees of the Securities and Ex-
16 change Commission who are later employed by fi-
17 nancial institutions did not assist such institutions
18 in violating any rules or regulations of the Commis-
19 sion during the course of their employment with
20 such Commission;

21 (5) determine if greater post-employment re-
22 strictions are necessary to prevent employees of the
23 Securities and Exchange Commission from being
24 employed by financial institutions after employment
25 with such Commission;

1 (6) determine if the volume of employees of the
2 Securities and Exchange Commission who are later
3 employed by financial institutions has led to ineffi-
4 ciencies in enforcement;

5 (7) determine if employees of the Securities and
6 Exchange Commission who are later employed by fi-
7 nancial institutions assisted such institutions in cir-
8 cumventing Federal rules and regulations while em-
9 ployed by such Commission;

10 (8) review any information that may address
11 the volume of employees of the Securities and Ex-
12 change Commission who are later employed by fi-
13 nancial institutions, and make recommendations to
14 Congress; and

15 (9) review other additional issues as may be
16 raised during the course of the study conducted
17 under this subsection.

18 (b) REPORT.—Not later than 1 year after the date
19 of the enactment of this subtitle, the Comptroller General
20 of the United States shall submit to the Committee on
21 Financial Services of the House of Representatives and
22 the Committee on Banking, Housing, and Urban Affairs
23 of the Senate a report on the results of the study required
24 by subsection (a).

Strike section 975 and insert the following (and redesignate succeeding sections and conform the table of contents accordingly):

1 **SEC. 975. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
2 **REQUIREMENT.**

3 (a) IN GENERAL.—The Securities Exchange Act of
4 1934 (as amended by section 3204) is amended by insert-
5 ing after section 15F (15 U.S.C. 78o–7) the following new
6 section:

7 **“SEC. 15G. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
8 **REQUIREMENT.**

9 “(a)(1)(A) It shall be unlawful for any person to
10 make use of the mails or any means or instrumentality
11 of interstate commerce to act as a municipal financial ad-
12 viser unless such person is registered as a municipal finan-
13 cial adviser in accordance with subsection (b).

14 “(B) Subparagraph (A) shall not apply to a natural
15 person associated with a municipal financial adviser, as
16 long as such adviser is registered in accordance with sub-
17 section (b) and is not a natural person.

18 “(2) The Commission, by rule or order, as it deems
19 consistent with the public interest and the protection of
20 investors, may conditionally or unconditionally exempt
21 from paragraph (1) of this section any municipal financial

1 adviser or class of municipal financial advisers specified
2 in such rule or order.

3 “(b)(1) A municipal financial adviser may be reg-
4 istered by filing with the Commission an application for
5 registration in such form and containing such information
6 and documents concerning such municipal financial ad-
7 viser and any persons associated with such municipal fi-
8 nancial adviser as the Commission, by rule, may prescribe
9 as necessary or appropriate in the public interest or for
10 the protection of investors. Within 45 days of the date of
11 the filing of such application (or within such longer period
12 as to which the applicant consents), the Commission
13 shall—

14 “(A) by order grant registration; or

15 “(B) institute proceedings to determine whether reg-
16 istration should be denied. Such proceedings shall include
17 notice of the grounds for denial under consideration and
18 opportunity for hearing and shall be concluded within 120
19 days of the date of the filing of the application for reg-
20 istration. At the conclusion of such proceedings, the Com-
21 mission, by order, shall grant or deny such registration.
22 The Commission may extend the time for conclusion of
23 such proceedings for up to 90 days if it finds good cause
24 for such extension and publishes its reasons for so finding,

1 or for such longer period as to which the applicant con-
2 sents.

3 The Commission shall grant such registration if
4 the Commission finds that the requirements of
5 this section are satisfied. The Commission shall
6 deny such registration if it does not make such
7 a finding or if it finds that if the applicant were
8 so registered, its registration would be subject
9 to suspension or revocation under paragraph
10 (4).

11 “(2) An application for registration of a municipal
12 financial adviser to be formed or organized may be made
13 by a municipal financial adviser to which the municipal
14 financial adviser to be formed or organized is to be the
15 successor. Such application, in such form as the Commis-
16 sion, by rule, may prescribe, shall contain such informa-
17 tion and documents concerning the applicant, the suc-
18 cessor, and any persons associated with the applicant or
19 the successor, as the Commission, by rule, may prescribe
20 as necessary or appropriate in the public interest or for
21 the protection of investors. The grant or denial of registra-
22 tion to such an applicant shall be in accordance with the
23 procedures set forth in paragraph (1) of this subsection.
24 If the Commission grants such registration, the registra-
25 tion shall terminate on the 45th day after the effective

1 date thereof, unless prior thereto the successor shall, in
2 accordance with such rules and regulations as the Com-
3 mission may prescribe, adopt the application for registra-
4 tion as its own.

5 “(3) Any provision of this title (other than section
6 5 and subsection (a) of this section) which prohibits any
7 act, practice, or course of business if the mails or any
8 means or instrumentality of interstate commerce is used
9 in connection therewith shall also prohibit any such act,
10 practice, or course of business by any registered municipal
11 financial adviser or any person acting on behalf of such
12 a municipal financial adviser, irrespective of any use of
13 the mails or any means or instrumentality of interstate
14 commerce in connection therewith.

15 “(4) The Commission, by order, shall censure, place
16 limitations on the activities, functions, or operations of,
17 suspend for a period not exceeding 12 months, or revoke
18 the registration of any municipal financial adviser if it
19 finds, on the record after notice and opportunity for hear-
20 ing, that such censure, placing of limitations, suspension,
21 or revocation is in the public interest and that such munic-
22 ipal financial adviser, whether prior or subsequent to be-
23 coming such, or any person associated with such municipal
24 financial adviser, whether prior or subsequent to becoming
25 so associated—

1 “(A) has willfully made or caused to be made
2 in any application for registration or report required
3 to be filed with the Commission or with any other
4 appropriate regulatory agency under this title, or in
5 any proceeding before the Commission with respect
6 to registration, any statement which was at the time
7 and in the light of the circumstances under which it
8 was made false or misleading with respect to any
9 material fact, or has omitted to state in any such
10 application or report any material fact which is re-
11 quired to be stated therein;

12 “(B) has been convicted within 10 years pre-
13 ceding the filing of any application for registration
14 or at any time thereafter of any felony or mis-
15 demeanor or of a substantially equivalent crime by
16 a foreign court of competent jurisdiction which the
17 Commission finds—

18 “(i) involves the purchase or sale of any
19 security, the taking of a false oath, the making
20 of a false report, bribery, perjury, burglary, any
21 substantially equivalent activity however de-
22 nominated by the laws of the relevant foreign
23 government, or conspiracy to commit any such
24 offense;

1 “(ii) arises out of the conduct of the busi-
2 ness of a municipal financial adviser, broker,
3 dealer, municipal securities dealer, government
4 securities broker, government securities dealer,
5 investment adviser, bank, insurance company,
6 fiduciary, transfer agent, nationally recognized
7 statistical rating organization, foreign person
8 performing a function substantially equivalent
9 to any of the above, or entity or person required
10 to be registered under the Commodity Ex-
11 change Act (7 U.S.C. 1 et seq.) or any substan-
12 tially equivalent foreign statute or regulation;

13 “(iii) involves the larceny, theft, robbery,
14 extortion, forgery, counterfeiting, fraudulent
15 concealment, embezzlement, fraudulent conver-
16 sion, or misappropriation of funds, or securities,
17 or substantially equivalent activity however de-
18 nominated by the laws of the relevant foreign
19 government; or

20 “(iv) involves the violation of section 152,
21 1341, 1342, or 1343 or chapter 25 or 47 of
22 title 18, United States Code, or a violation of
23 a substantially equivalent foreign statute;

24 “(C) is permanently or temporarily enjoined by
25 order, judgment, or decree of any court of competent

1 jurisdiction from acting as a municipal financial ad-
2 viser, investment adviser, underwriter, broker, deal-
3 er, municipal securities dealer, government securities
4 broker, government securities dealer, transfer agent,
5 nationally recognized statistical rating organization,
6 foreign person performing a function substantially
7 equivalent to any of the above, or entity or person
8 required to be registered under the Commodity Ex-
9 change Act or any substantially equivalent foreign
10 statute or regulation, or as an affiliated person or
11 employee of any investment company, bank, insur-
12 ance company, foreign entity substantially equivalent
13 to any of the above, or entity or person required to
14 be registered under the Commodity Exchange Act or
15 any substantially equivalent foreign statute or regu-
16 lation or from engaging in or continuing any con-
17 duct or practice in connection with any such activity,
18 or in connection with the purchase or sale of any se-
19 curity;

20 “(D) has willfully violated any provision of the
21 Securities Act of 1933, the Investment Advisers Act
22 of 1940, the Investment Company Act of 1940, the
23 Commodity Exchange Act, this title, the rules or
24 regulations under any of such statutes, or the rules

1 of the Municipal Securities Rulemaking Board, or is
2 unable to comply with any such provision;

3 “(E) has willfully aided, abetted, counseled,
4 commanded, induced, or procured the violation by
5 any other person of any provision of the Securities
6 Act of 1933, the Investment Advisers Act of 1940,
7 the Investment Company Act of 1940, the Com-
8 modity Exchange Act, this title, the rules or regula-
9 tions under any of such statutes, or the rules of the
10 Municipal Securities Rulemaking Board, or has
11 failed reasonably to supervise, with a view to pre-
12 venting violations of the provisions of such statutes,
13 rules, and regulations, another person who commits
14 such a violation, if such other person is subject to
15 his supervision. For the purposes of this subpara-
16 graph, no person shall be deemed to have failed rea-
17 sonably to supervise any other person, if—

18 “(i) there have been established proce-
19 dures, and a system for applying such proce-
20 dures, which would reasonably be expected to
21 prevent and detect, insofar as practicable, any
22 such violation by such other person; and

23 “(ii) such person has reasonably dis-
24 charged the duties and obligations incumbent
25 upon him by reason of such procedures and sys-

1 tem without reasonable cause to believe that
2 such procedures and system were not being
3 complied with;

4 “(F) is subject to any order of the Commission
5 barring or suspending the right of the person to be
6 associated with a municipal financial adviser;

7 “(G) has been found by a foreign financial reg-
8 ulatory authority to have—

9 “(i) made or caused to be made in any ap-
10 plication for registration or report required to
11 be filed with a foreign financial regulatory au-
12 thority, or in any proceeding before a foreign fi-
13 nancial regulatory authority with respect to reg-
14 istration, any statement that was at the time
15 and in the light of the circumstances under
16 which it was made false or misleading with re-
17 spect to any material fact, or has omitted to
18 state in any application or report to the foreign
19 financial regulatory authority any material fact
20 that is required to be stated therein;

21 “(ii) violated any foreign statute or regula-
22 tion regarding transactions in securities, or con-
23 tracts of sale of a commodity for future deliv-
24 ery, traded on or subject to the rules of a con-
25 tract market or any board of trade; or

1 “(iii) aided, abetted, counseled, com-
2 manded, induced, or procured the violation by
3 any person of any provision of any statutory
4 provisions enacted by a foreign government, or
5 rules or regulations thereunder, empowering a
6 foreign financial regulatory authority regarding
7 transactions in securities, or contracts of sale of
8 a commodity for future delivery, traded on or
9 subject to the rules of a contract market or any
10 board of trade, or has been found, by a foreign
11 financial regulatory authority, to have failed
12 reasonably to supervise, with a view to pre-
13 venting violations of such statutory provisions,
14 rules, and regulations, another person who com-
15 mits such a violation, if such other person is
16 subject to his supervision; or

17 “(H) is subject to any final order of a State se-
18 curities commission (or any agency or officer per-
19 forming like functions), State authority that super-
20 vises or examines banks, savings associations, or
21 credit unions, State insurance commission (or any
22 agency or office performing like functions), an ap-
23 propriate Federal banking agency (as defined in sec-
24 tion 3 of the Federal Deposit Insurance Act (12

1 U.S.C. 1813(q))), or the National Credit Union Ad-
2 ministration, that—

3 “(i) bars such person from association with
4 an entity regulated by such commission, author-
5 ity, agency, or officer, or from engaging in the
6 business of securities, insurance, banking, sav-
7 ings association activities, or credit union activi-
8 ties; or

9 “(ii) constitutes a final order based on vio-
10 lations of any laws or regulations that prohibit
11 fraudulent, manipulative, or deceptive conduct.

12 “(5) Pending final determination whether any reg-
13 istration under this subsection shall be revoked, the Com-
14 mission, by order, may suspend such registration, if such
15 suspension appears to the Commission, after notice and
16 opportunity for hearing, to be necessary or appropriate in
17 the public interest or for the protection of investors. Any
18 registered municipal financial adviser may, upon such
19 terms and conditions as the Commission deems necessary
20 or appropriate in the public interest or for the protection
21 of investors, withdraw from registration by filing a written
22 notice of withdrawal with the Commission. If the Commis-
23 sion finds that any registered municipal financial adviser
24 is no longer in existence or has ceased to do business as
25 a municipal financial adviser, the Commission, by order,

1 shall cancel the registration of such municipal financial
2 adviser.

3 “(6)(A) With respect to any person who is associated,
4 who is seeking to become associated, or, at the time of
5 the alleged misconduct, who was associated or was seeking
6 to become associated with a municipal financial adviser,
7 the Commission, by order, shall censure, place limitations
8 on the activities or functions of such person, or suspend
9 for a period not exceeding 12 months, or bar such person
10 from being associated with a broker, dealer, investment
11 adviser, municipal securities dealer, transfer agent, na-
12 tionally recognized statistical rating organization, or mu-
13 nicipal financial adviser, if the Commission finds, on the
14 record after notice and opportunity for a hearing, that
15 such censure, placing of limitations, suspension, or bar is
16 in the public interest and that such person—

17 “(i) has committed or omitted any act, or is
18 subject to an order or finding, enumerated in sub-
19 paragraph (A), (D), (E), (G), or (H) of paragraph
20 (4) of this subsection;

21 “(ii) has been convicted of any offense specified
22 in subparagraph (B) of such paragraph (4) within
23 10 years of the commencement of the proceedings
24 under this paragraph; or

1 “(iii) is enjoined from any action, conduct, or
2 practice specified in subparagraph (C) of such para-
3 graph (4).

4 “(B) It shall be unlawful—

5 “(i) for any person as to whom an order under
6 subparagraph (A) is in effect, without the consent of
7 the Commission, willfully to become, or to be, associ-
8 ated with a municipal financial adviser in contraven-
9 tion of such order; or

10 “(ii) for any municipal financial adviser to per-
11 mit such a person, without the consent of the Com-
12 mission, to become or remain, a person associated
13 with the municipal financial adviser in contravention
14 of such order, if such municipal financial adviser
15 knew, or in the exercise of reasonable care should
16 have known, of such order.

17 “(7) No registered municipal financial adviser shall
18 act as such unless it meets such standards of operational
19 capability and such municipal financial adviser and all
20 natural persons associated with such municipal financial
21 adviser meet such standards of training, experience, com-
22 petence, and such other qualifications as the Commission
23 finds necessary or appropriate in the public interest or for
24 the protection of investors. The Commission shall establish
25 such standards by rules and regulations, which may—

1 “(A) specify that all or any portion of such
2 standards shall be applicable to any class of munic-
3 ipal financial advisers and persons associated with
4 municipal financial advisers;

5 “(B) require persons in any such class to pass
6 tests prescribed in accordance with such rules and
7 regulations, which tests shall, with respect to any
8 class of partners, officers, or supervisory employees
9 (which latter term may be defined by the Commis-
10 sion’s rules and regulations) engaged in the manage-
11 ment of the municipal financial adviser, include
12 questions relating to bookkeeping, accounting, super-
13 vision of employees, maintenance of records, and
14 other appropriate matters; and

15 “(C) provide that persons in any such class
16 other than municipal financial advisers and partners,
17 officers, and supervisory employees of municipal fi-
18 nancial advisers, may be qualified solely on the basis
19 of compliance with such standards of training and
20 such other qualifications as the Commission finds
21 appropriate.

22 The Commission, by rule, may prescribe reasonable fees
23 and charges to defray its costs in carrying out this para-
24 graph, including, but not limited to, fees for any test ad-
25 ministered by it or under its direction.

1 “(c)(1)(A) No municipal financial adviser shall make
2 use of the mails or any means or instrumentality of inter-
3 state commerce in connection with which such municipal
4 financial adviser engages in any fraudulent, deceptive, or
5 manipulative act or practice or violates such rules and reg-
6 ulations regarding conflicts of interest or fair practices,
7 including but not limited to rules and regulations related
8 to political contributions, as the Commission shall pre-
9 scribe in the public interest or for the protection of inves-
10 tors or to maintain fair and orderly markets.

11 “(B) The Commission shall, for the purposes of this
12 paragraph as the Commission finds necessary or appro-
13 priate in the public interest or for the protection of inves-
14 tors, by rules and regulations define, and prescribe means
15 reasonably designed to prevent, such acts and practices
16 as are fraudulent, deceptive, or manipulative.

17 “(2) If the Commission finds, after notice and oppor-
18 tunity for a hearing, that any person subject to the provi-
19 sions of this section or any rule or regulation thereunder
20 has failed to comply with any such provision, rule, or regu-
21 lation in any material respect, the Commission may pub-
22 lish its findings and issue an order requiring such person,
23 and any person who was a cause of the failure to comply
24 due to an act or omission the person knew or should have
25 known would contribute to the failure to comply, to com-

1 ply, or to take steps to effect compliance, with such provi-
2 sion or such rule or regulation thereunder upon such
3 terms and conditions and within such time as the Commis-
4 sion may specify in such order.

5 “(d) Every registered municipal financial adviser
6 shall establish, maintain, and enforce written policies and
7 procedures reasonably designed, taking into consideration
8 the nature of such municipal financial adviser’s business,
9 to prevent the misuse in violation of this title, or the rules
10 or regulations thereunder, of material, nonpublic informa-
11 tion by such municipal financial adviser or any person as-
12 sociated with such municipal financial adviser. The Com-
13 mission, as it deems necessary or appropriate in the public
14 interest or for the protection of investors, shall adopt rules
15 or regulations to require specific policies or procedures
16 reasonably designed to prevent misuse in violation of this
17 title (or the rules or regulations thereunder) of material,
18 nonpublic information.

19 “(e) A municipal financial adviser and any person as-
20 sociated with such municipal financial adviser shall be
21 deemed to have a fiduciary duty to any municipal securi-
22 ties issuer for whom such municipal financial adviser acts
23 as a municipal financial adviser. A municipal financial ad-
24 viser may not engage in any act, practice, or course of
25 business which is not consistent with a municipal financial

1 adviser’s fiduciary duty. The Commission shall, for the
2 purposes of this paragraph, by rules and regulations de-
3 fine, and prescribe means reasonably designed to prevent,
4 such acts, practices, and courses of business as are not
5 consistent with a municipal financial adviser’s fiduciary
6 duty to its clients.”.

7 (b) DEFINITION.—Section 3(a) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78c(a)) (as amended by
9 section 3201(6)) is amended by adding at the end the fol-
10 lowing new paragraphs:

11 “(78) MUNICIPAL FINANCIAL ADVISER.—

12 “(A) The term ‘municipal financial adviser’
13 means a person who, for compensation, engages
14 in the business of—

15 “(i) providing advice to a municipal
16 securities issuer with respect to—

17 “(I) the issuance or proposed
18 issuance of securities, including any
19 remarketing of municipal securities
20 directly or indirectly by or on behalf
21 of a municipal securities issuer;

22 “(II) the investment of proceeds
23 from securities issued by such munic-
24 ipal securities issuer;

1 “(III) the hedging of any risks
2 associated with subclause (I) or (II),
3 including advice as to swap agree-
4 ments (as defined in section 206A of
5 the Gramm-Leach-Bliley Act regard-
6 less of whether the counterparties
7 constitute eligible contract partici-
8 pants); or

9 “(IV) preparation of disclosure
10 documents in connection with the
11 issuance, proposed issuance, or pre-
12 vious issuance of securities issued by
13 a municipal securities issuer, includ-
14 ing, without limitation, official state-
15 ments and documents prepared in
16 connection with a written agreement
17 or contract for the benefit of holders
18 of such securities described in section
19 240.15c2-12 of title 17, Code of Fed-
20 eral Regulations;

21 “(ii) assisting a municipal securities
22 issuer in selecting or negotiating guaran-
23 teed investment contracts or other invest-
24 ment products; or

1 “(iii) assisting any municipal securi-
2 ties issuer in the primary offering of secu-
3 rities not involving a public offering.

4 “(B) Such term does not include—

5 “(i) an attorney, if the attorney is of-
6 fering advice or providing services that are
7 of a traditional legal nature;

8 “(ii) a nationally recognized statistical
9 rating organization to the extent it is in-
10 volved in the process of developing credit
11 ratings;

12 “(iii) a registered broker-dealer when
13 acting as an underwriter, as such term is
14 defined in section 2(a)(11) of the Securi-
15 ties Act of 1933 (15 U.S.C. 77b(a)(11));

16 “(iv) a State or any political subdivi-
17 sion thereof; or

18 “(v) the independent accountant that
19 audits the financial statements of the mu-
20 nicipal securities issuer.

21 “(79) MUNICIPAL SECURITIES ISSUER.—The
22 term ‘municipal securities issuer’ means—

23 “(A) any entity that has the ability to
24 issue a security the interest on which is exclud-
25 able from gross income under section 103 of the

1 Internal Revenue Code of 1986 and the regula-
2 tions thereunder; or

3 “(B) any person who receives the proceeds
4 generated from the issuance of municipal secu-
5 rities.

6 “(80) PERSON ASSOCIATED WITH A MUNICIPAL
7 FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-
8 NICIPAL FINANCIAL ADVISER.—The term ‘person as-
9 sociated with a municipal financial adviser’ or ‘asso-
10 ciated person of a municipal financial adviser’ means
11 any partner, officer, director, or branch manager of
12 such municipal financial adviser (or any person oc-
13 cupying a similar status or performing similar func-
14 tions), any person directly or indirectly controlling,
15 controlled by, or under common control with such
16 municipal financial adviser, or any employee of such
17 municipal financial adviser, except that any person
18 associated with a municipal financial adviser whose
19 functions are solely clerical or ministerial shall not
20 be included in the meaning of such term for pur-
21 poses of section 15G(b) (other than paragraph (6)
22 thereof).”.

23 (c) CONFORMING AMENDMENTS.—

24 (1) SECURITIES EXCHANGE ACT OF 1934 .—The
25 Securities Exchange Act of 1934 is amended—

1 (A) in section 15(b)(4)(B)(ii) (15 U.S.C.
2 78o(b)(4)(B)(ii)), by inserting “municipal fi-
3 nance adviser,” after “nationally recognized
4 statistical rating organization,”;

5 (B) in section 15(b)(4)(C) (15 U.S.C.
6 78o(b)(4)(C)), by inserting “municipal finance
7 adviser,” after “nationally recognized statistical
8 rating organization,”; and

9 (C) in section 17(a)(1) (15 U.S.C.
10 78q(a)(1)), by inserting “registered municipal
11 financial adviser,” after “nationally recognized
12 statistical rating organization,”.

13 (2) INVESTMENT COMPANY ACT OF 1940.—The
14 Investment Company Act of 1940 is amended—

15 (A) in section 2(a) (15 U.S.C. 80a–2(a)),
16 by inserting at the end the following new para-
17 graph:

18 “(54) The term ‘municipal finance adviser’ has
19 the same meaning as in section 3 of the Securities
20 Exchange Act of 1934.”;

21 (B) in section 9(a)(1) (15 U.S.C. 80a–
22 9(a)(1)), by inserting “municipal finance ad-
23 viser,” after “credit rating agency,”; and

1 (C) in section 9(a)(2) (15 U.S.C. 80a–
2 9(a)(2)), by inserting “municipal finance ad-
3 viser,” after “credit rating agency,”.

4 (3) INVESTMENT ADVISERS ACT OF 1940.—The
5 Investment Advisers Act of 1940 is amended—

6 (A) in section 202(a) (15 U.S.C. 80b–
7 2(a)), by inserting at the end the following new
8 paragraph:

9 “(31) The term ‘municipal finance adviser’ has
10 the same meaning as in section 3 of the Securities
11 Exchange Act of 1934.”;

12 (B) in section 203(e)(2)(B) (15 U.S.C.
13 80b–3(e)(2)(B)), by inserting “municipal fi-
14 nance adviser,” after “credit rating agency,”;
15 and

16 (C) in section 203(e)(4) (15 U.S.C. 80b–
17 3(e)(4)) is amended by inserting “municipal fi-
18 nance adviser,” after “credit rating agency,”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall take effect 30 days after the date
22 of the enactment of this subtitle.

23 (2) EFFECTIVE DATE AND REQUIREMENTS FOR
24 REGULATIONS.—Notwithstanding subsection (a), the
25 Securities and Exchange Commission shall, within

1 120 days after the date of the enactment of this
2 subtitle, publish for notice and public comment such
3 regulations as are initially required to implement
4 this section, and shall take final action with respect
5 to such regulations not later than 270 days after the
6 date of enactment of this subtitle.

7 (3) REGISTRATION DATE.—No person may con-
8 tinue to act as a municipal financial adviser, as such
9 term is defined in section 3(a)(65) of the Securities
10 Exchange Act of 1934, after 30 days after the date
11 the regulations described in subsection (b) become
12 effective unless such person has been registered as
13 required by the amendment made by this section.

14 **SEC. 976. MUNICIPAL SECURITIES RULEMAKING BOARD**
15 **MEMBERS.**

16 Section 15B(b) of the Securities Exchange Act of
17 1934 (15 U.S.C. 78o–4(b)) is amended—

18 (1) by amending paragraph (1) to read as fol-
19 lows:

20 “(1) COMPOSITION OF THE MUNICIPAL SECURI-
21 TIES RULEMAKING BOARD.—Not later than October
22 1, 2010, the Municipal Securities Rulemaking Board
23 (hereinafter in this section referred to as the
24 ‘Board’), shall be composed of members which shall

1 perform the duties set forth in this section and shall
2 consist of—

3 “(A) a majority of independent public rep-
4 resentatives, at least one of whom shall be rep-
5 resentative of investors in municipal securities
6 and at least one of whom shall be representative
7 of issuers of municipal securities (which mem-
8 bers are hereinafter referred to as ‘public rep-
9 resentatives’);

10 “(B) at least one individual who is rep-
11 resentative of municipal securities brokers and
12 municipal securities dealers which are not
13 banks or subsidiaries or departments or divi-
14 sions of banks (which members are hereinafter
15 referred to as ‘broker-dealer representatives’);
16 and

17 “(C) at least one individual who is rep-
18 resentative of municipal securities dealers which
19 are banks or subsidiaries or departments or di-
20 visions of banks (which members are herein-
21 after referred to as ‘bank representatives’).”;
22 and

23 (2) by amending paragraph (2)(B) to read as
24 follows:

1 “(B) Establish fair procedures for the nomina-
2 tion and election of members of the Board and as-
3 sure fair representation in such nominations and
4 elections of municipal securities brokers and munic-
5 ipal securities dealers. Such rules—

6 “(i) shall establish requirements regarding
7 the independence of public representatives;

8 “(ii) shall provide that the number of pub-
9 lic representatives of the Board shall at all
10 times exceed the total number of broker-dealer
11 representatives and bank representatives;

12 “(iii) shall establish minimum knowledge,
13 experience, and other appropriate qualifications
14 for individuals to serve as public representa-
15 tives, which may include, among other things,
16 prior work experience in the securities, munic-
17 ipal finance, or municipal securities industries;

18 “(iv) shall specify the term members shall
19 serve; and

20 “(v) may increase or decrease the number
21 of members which shall constitute the whole
22 Board, but in no case may such number be an
23 even number.”.

Page 1293, beginning on line 16, strike “the effec-
tive date of this paragraph” and insert “the date of en-

actment of the Investor Protection and Securities Reform Act of 2010”.

Page 1295, strike lines 16 through 18.

Page 1311, line 14, strike “\$100,000,000” and insert “\$150,000,000”.

Page 1311, line 17, strike “\$75,000,000” and insert “\$125,000,000”.

Page 1311, line 21, strike “\$50,000,000” and insert “\$100,000,000”.

Page 1337, after line 7, insert the following new section (and redesignate succeeding sections and conform the table of contents accordingly):

1 SEC. 989E. CORRECTIVE RESPONSES BY HEADS OF CER-
2 TAIN ENTITIES TO DEFICIENCIES IDENTIFIED
3 BY INSPECTORS GENERAL.

4 The Chairman of the Board of Governors of the Fed-
5 eral Reserve System, the Chairman of the Commodity Fu-
6 tures Trading Commission, the Chairman of the National
7 Credit Union Administration, the Director of the Pension
8 Benefit Guaranty Corporation, and the Chairman of the
9 Securities and Exchange Commission shall each—

- 1 (1) take action to address deficiencies identified
2 by a report or investigation of the Inspector General
3 of the entity concerned; or
4 (2) certify to Congress that no action is nec-
5 essary or appropriate in connection with a deficiency
6 described in paragraph (1).

Page 1342, after line 25, insert the following (and conform the table of contents accordingly):

7 **SEC. 989G. EXEMPTION FOR NONACCELERATED FILERS.**

8 (a) EXEMPTION.—Section 404 of the Sarbanes-Oxley
9 Act of 2002 is amended by adding at the end the fol-
10 lowing:

11 “(c) EXEMPTION FOR SMALLER ISSUERS.—Sub-
12 section (b) shall not apply with respect to any audit report
13 prepared for an issuer that is not an accelerated filer with-
14 in the meaning Rule 12b–2 of the Commission (17 C.F.R.
15 240.12b–2).”.

16 (b) STUDY.—The Securities and Exchange Commis-
17 sion shall conduct a study to determine how the Commis-
18 sion could reduce the burden of complying with section
19 404(b) of the Sarbanes-Oxley Act of 2002 for companies
20 whose market capitalization is between \$75,000,000 and
21 \$250,000,000 for the relevant reporting period while
22 maintaining investor protections for such companies. The
23 study shall also consider whether any such methods of re-

1 ducing the compliance burden or a complete exemption for
2 such companies from compliance with such section would
3 encourage companies to list on exchanges in the United
4 States in their initial public offerings. Not later than 9
5 months after the date of the enactment of this subtitle,
6 the Commission shall transmit a report of such study to
7 Congress.

8 **SEC. 989H. ANALYSIS OF RULE REGARDING SMALLER RE-**
9 **PORTING COMPANIES.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Many small businesses in cutting-edge tech-
12 nology sectors require significant capital investment
13 to develop new technologies related to clean energy,
14 drug treatments for terminal diseases and food pro-
15 duction in hunger-stricken areas of the World.

16 (2) Many technology companies conducting re-
17 search do not meet the definition of “smaller report-
18 ing company” under the Securities and Exchange
19 Commission’s Rule 12b–2 due to unusually high
20 public floats despite low or zero revenue.

21 (3) The Final Report of the Advisory Com-
22 mittee on Smaller Public Companies to the Securi-
23 ties and Exchange Commission recommended that a
24 company with a market capitalization of less than
25 about \$787,000,000 be considered a smallcap com-

1 pany and that the Commission provide exemptions
2 from section 404(b) of the Sarbanes-Oxley Act to
3 companies with less than \$250,000,000 in annual
4 revenues.

5 (b) STUDY OF USING REVENUE AS CRITERIA TO DE-
6 FINE SMALLER REPORTING COMPANY.—The Securities
7 and Exchange Commission shall conduct a study of the
8 inclusion of revenue as a criteria used in defining smaller
9 reporting company as defined under the Commission’s
10 Rule 12b–2 to account for smaller public companies with
11 public floats less than \$700,000,000 and revenues less
12 than \$250,000,000. Not later than 180 days after the date
13 of enactment of this subtitle, the Commission shall provide
14 the Committee on Financial Services of the House of Rep-
15 resentatives and the Committee on Banking, Housing and
16 Urban Affairs of the Senate a report of the findings of
17 the study.

18 **SEC. 989I. STUDY ON INTERNAL CONTROL EVALUATION**
19 **AND REPORTING COST BURDENS ON SMALL-**
20 **ER ISSUERS.**

21 (a) STUDY REQUIRED.—The Government Account-
22 ability Office shall conduct a study to determine—
23 (1) determine how to reduce the burden of com-
24 plying with section 404(b) of the Sarbanes-Oxley Act
25 of 2002 for companies whose market capitalization

1 is less than \$250,000,000 for the relevant reporting
2 period while maintaining investor protections for
3 such companies; and

4 (2) determine whether various methods of re-
5 ducing the compliance burden or a complete exemp-
6 tion for such companies (whose market capitalization
7 is less than \$250,000,000 for the relevant reporting
8 period) from such compliance would encourage com-
9 panies to list on exchanges in the United States in
10 their initial public offerings.

11 (b) REPORTS REQUIRED.—Not later than 9 months
12 after the date of the enactment of this subtitle, the Gov-
13 ernment Accountability Office shall submit a report to
14 Congress containing the findings and conclusions of the
15 studies required under subsection (a), together with such
16 recommendations for regulatory, legislative, or administra-
17 tive action as may be appropriate.



**FINANCIAL REFORM CONFERENCE: HOUSE OFFER
FOR SUBTITLE E OF TITLE IX**

Page 1222, after line 6, insert the following:

1 “(b) SHAREHOLDER APPROVAL OF GOLDEN PARA-
2 CHUTE COMPENSATION.—

3 “(1) DISCLOSURE.—In any proxy or consent
4 solicitation material (the solicitation of which is sub-
5 ject to the rules of the Commission pursuant to sub-
6 section (a)) for a meeting of the shareholders occur-
7 ring after the end of the 6-month period beginning
8 on the date of enactment of this section, at which
9 shareholders are asked to approve an acquisition,
10 merger, consolidation, or proposed sale or other dis-
11 position of all or substantially all the assets of an
12 issuer, the person making such solicitation shall dis-
13 close in the proxy or consent solicitation material, in
14 a clear and simple form in accordance with regula-
15 tions to be promulgated by the Commission, any
16 agreements or understandings that such person has
17 with any named executive officers of such issuer (or
18 of the acquiring issuer, if such issuer is not the ac-
19 quiring issuer) concerning any type of compensation

1 (whether present, deferred, or contingent) that is
2 based on or otherwise relates to the acquisition,
3 merger, consolidation, sale, or other disposition of all
4 or substantially all of the assets of the issuer and
5 the aggregate total of all such compensation that
6 may (and the conditions upon which it may) be paid
7 or become payable to or on behalf of such executive
8 officer.

9 “(2) SHAREHOLDER APPROVAL.—Any proxy or
10 consent or authorization relating to the proxy or
11 consent solicitation material containing the disclo-
12 sure required by paragraph (1) shall include a sepa-
13 rate resolution subject to shareholder vote to ap-
14 prove such agreements or understandings and com-
15 pensation as disclosed, unless such agreements or
16 understandings have been subject to a shareholder
17 vote under subsection (a).”.

Page 1222, line 7, strike “(b)” and insert “(c)”.

Page 1222, after line 19, insert the following:

18 “(d) DISCLOSURE OF VOTES.—Every institutional in-
19 vestment manager subject to section 13(f) shall report at
20 least annually how it voted on any shareholder vote pursu-
21 ant to subsection (a) and (b), unless such vote is otherwise

1 required to be reported publicly by rule or regulation of
2 the Commission.”.

Page 1225, line 13, strike “issuer, including—” and
insert “issuer. Such factors shall be competitively neutral
among categories of consultants, legal counsel, or other
advisers and preserve the ability of compensation commit-
tees to retain the services of members of any such cat-
egory, and shall include—”.

Page 1222, line 21, strike “Section” and insert “(a)
IN GENERAL.—Section”.

Page 1230, after line 23, insert the following:

3 (b) STUDY AND REPORT.—

4 (1) STUDY.—The Securities and Exchange
5 Commission shall conduct a study and review of the
6 use of compensation consultants and the effects of
7 such use.

8 (2) REPORT.—Not later than 2 years after the
9 date of the enactment of this Act, the Commission
10 shall submit a report to Congress on the results of
11 the study and review required by this subsection.

Page 1234, strike line 22 through page 1236, line
12, and insert the following:

1 **SEC. 956. ENHANCED COMPENSATION STRUCTURE RE-**
2 **PORTING.**

3 (a) ENHANCED DISCLOSURE AND REPORTING OF
4 COMPENSATION ARRANGEMENTS.—

5 (1) IN GENERAL.—Not later than 9 months
6 after the date of enactment of this title, the appro-
7 priate Federal regulators jointly shall prescribe regu-
8 lations to require each covered financial institution
9 to disclose to the appropriate Federal regulator the
10 structures of all incentive-based compensation ar-
11 rangements offered by such covered financial institu-
12 tions sufficient to determine whether the compensa-
13 tion structure—

14 (A) is aligned with sound risk manage-
15 ment;

16 (B) is structured to account for the time
17 horizon of risks; and

18 (C) meets such other criteria as the appro-
19 priate Federal regulators jointly may determine
20 to be appropriate to reduce unreasonable incen-
21 tives offered by such institutions for employees
22 to take undue risks that—

23 (i) could threaten the safety and
24 soundness of covered financial institutions;

25 or

1 (ii) could have serious adverse effects
2 on economic conditions or financial sta-
3 bility.

4 (2) RULES OF CONSTRUCTION.—Nothing in
5 this section shall be construed as requiring the re-
6 porting of the actual compensation of particular in-
7 dividuals. Nothing in this section shall be construed
8 to require a covered financial institution that does
9 not have an incentive-based payment arrangement to
10 make the disclosures required under this subsection.

11 (b) PROHIBITION ON CERTAIN COMPENSATION AR-
12 RANGEMENTS.— Not later than 9 months after the date
13 of enactment of this title, and taking into account the fac-
14 tors described in paragraph (1) of subsection (a), the ap-
15 propriate Federal regulators shall jointly prescribe regula-
16 tions that prohibit any incentive-based payment arrange-
17 ment, or any feature of any such arrangement, that the
18 regulators determine encourages inappropriate risks by
19 covered financial institutions that—

20 (1) could threaten the safety and soundness of
21 covered financial institutions; or

22 (2) could have serious adverse effects on eco-
23 nomic conditions or financial stability.

24 (c) ENFORCEMENT.— The provisions of this section
25 shall be enforced under section 505 of the Gramm-Leach-

1 Bliley Act and, for purposes of such section, a violation
2 of this section shall be treated as a violation of subtitle
3 A of title V of such Act.

4 (d) DEFINITIONS.— As used in this section—

5 (1) the term “appropriate Federal regulator”
6 means the Board of Governors of the Federal Re-
7 serve System, the Office of the Comptroller of the
8 Currency, the Board of Directors of the Federal De-
9 posit Insurance Corporation, the Director of the Of-
10 fice of Thrift Supervision, the National Credit Union
11 Administration Board, the Securities and Exchange
12 Commission, the Federal Housing Finance Agency;
13 and

14 (2) the term “covered financial institution”
15 means—

16 (A) a depository institution or depository
17 institution holding company, as such terms are
18 defined in section 3 of the Federal Deposit In-
19 surance Act (12 U.S.C. 1813);

20 (B) a broker-dealer registered under sec-
21 tion 15 of the Securities Exchange Act of 1934
22 (15 U.S.C. 78o);

23 (C) a credit union, as described in section
24 19(b)(1)(A)(iv) of the Federal Reserve Act;

1 (D) an investment advisor, as such term is
2 defined in section 202(a)(11) of the Investment
3 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

4 (E) the Federal National Mortgage Asso-
5 ciation;

6 (F) the Federal Home Loan Mortgage
7 Corporation; and

8 (G) any other financial institution that the
9 appropriate Federal regulators, jointly, by rule,
10 determine should be treated as a covered finan-
11 cial institution for purposes of this section.

12 (e) EXEMPTION FOR CERTAIN FINANCIAL INSTITU-
13 TIONS.—The requirements of this section shall not apply
14 to covered financial institutions with assets of less than
15 \$1,000,000,000.

16 (f) LIMITATION.— No regulation promulgated pursu-
17 ant to this section shall be allowed to require the recovery
18 of incentive-based compensation under compensation ar-
19 rangements in effect on the date of enactment of this title,
20 provided such compensation agreements are for a period
21 of no more than 24 months. Nothing in this title shall
22 prevent or limit the recovery of incentive-based compensa-
23 tion under any other applicable law.

Page 1237, line 19, strike the period and insert “,
and does not include a vote with respect to the

uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b-1 et seq.).”.



HOUSE PROPOSED AMENDMENTS TO TITLE XI

[Page and line #s refer to Base text of proposed conference report]

Page 1724, line 16, strike “and”.

Page 1724, line 18, strike “losses and” and insert “losses,”.

Page 1724, line 19, strike “orderly fashion.” and insert “orderly fashion, and that the Board and the Secretary of the Treasury would have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99 percent confidence that funds disbursed under the facility or program will be fully repaid, and interest thereon will be paid, to the Federal Reserve System”.

Page 1730, strike line 7 and insert the following:

- 1 (1) DEFINITIONS.—For purposes of this sub-
2 section, the following definitions shall apply:
3 (A) CREDIT FACILITY.—The term

Page 1730, after line 15, insert the following new subparagraph:

1 (B) COVERED TRANSACTION.—The term
2 “covered transaction” means any open market
3 transaction or discount window advance that
4 meets the definition of “covered transaction” in
5 section 11(s) of the Federal Reserve Act .

Page 1731, line 2, insert “or a covered transaction”
after “credit facility”.

Page 1731, line 4, strike “of” and insert “gov-
erning”.

Page 1731, line 5, insert “or covered transaction”
after “credit facility”.

Page 1731, line 7, insert “or covered transaction”
after “the facility”.

Page 1731, line 10, insert “or the conduct of a cov-
ered transaction” after “credit facility”.

Page 1731, line 16, insert “or to conduct any cov-
ered transaction” after “credit facility”.

Page 1732, line 15, insert “or covered transaction”
after “credit facility”.

Page 1732, line 16, insert “or transferred by or to”
after “by”.

Page 1732, line 17, insert “or covered transaction” after “facility”.

Page 1732, line 18, insert “or transferred” after “held”.

Page 1732, line 19, insert “or covered transaction” after “credit facility”.

Page 1733, line 5, strike “assets or collateral” and insert “assets, collateral, or transaction”.

Page 1733, line 22, strike the closing quotation marks and the 2nd period.

Page 1733, after line 22, insert the following new clause:

1 “(v) RELEASE OF COVERED TRANS-
2 ACTION INFORMATION.—The Comptroller
3 General shall release a nonredacted version
4 of any report regarding covered trans-
5 actions upon the release of the information
6 regarding such covered transactions by the
7 Board of Governors of the Federal Reserve
8 System as provided in section 11(s) of the
9 Federal Reserve Act.”.

Page 1734, strike line 19, and insert the following:

1 (a) IN GENERAL.—Section 2B of the Federal Reserve
2 Act (12 U.S.C.

Page 1735, after line 17 insert the following new
subsection:

3 (b) FEDERAL RESERVE TRANSPARENCY AND RE-
4 LEASE OF INFORMATION.—Section 11 of the Federal Re-
5 serve Act (12 U.S.C. 248) the following new subsection:

6 “(s) FEDERAL RESERVE TRANSPARENCY AND RE-
7 LEASE OF INFORMATION.—

8 “(1) IN GENERAL.—In order to ensure the dis-
9 closure in a timely manner consistent with the pur-
10 poses of this Act of information concerning the bor-
11 rowers and counterparties participating in emer-
12 gency credit facilities, discount window lending pro-
13 grams and open market operations authorized or
14 conducted by the Board or a Federal reserve bank,
15 the Board of Governors of the Federal Reserve Sys-
16 tem shall disclose, as provided in paragraph (2)—

17 “(A) the names and identifying details of
18 each borrower, participant or counterparty in
19 any credit facility or covered transaction;

20 “(B) the amount borrowed by or trans-
21 ferred by or to a specific borrower, participant
22 or counterparty in any credit facility or covered
23 transaction;

1 “(C) the interest rate or discount paid by
2 each borrower, participant or counterparty in
3 any credit facility or covered transaction; and

4 “(D) information identifying the types and
5 amounts of collateral pledged or assets trans-
6 ferred in connection with participation in any
7 credit facility or covered transaction.

8 “(2) MANDATORY RELEASE DATE.—In the case
9 of—

10 “(A) a credit facility, the Board shall dis-
11 close the information described in paragraph
12 (1) on the date that is 1 year after the effective
13 date of the termination by the Board of the au-
14 thorization of the credit facility; and

15 “(B) a covered transaction, the Board
16 shall disclose the information described in para-
17 graph (1) on the last day of the eighth calendar
18 quarter following the calendar quarter in which
19 the covered transaction was conducted.

20 “(3) EARLIER RELEASE DATE AUTHORIZED.—
21 The Chairman of the Board may publicly release the
22 information described in paragraph (1) before the
23 relevant date specified in paragraph (2) if the Chair-
24 man determines that such disclosure would be in the
25 public interest and would not harm the effectiveness

1 of the relevant credit facility or the purpose or con-
2 duct of covered transactions.

3 “(4) DEFINITIONS.—For purposes of this sub-
4 section, the following definitions shall apply:

5 “(A) CREDIT FACILITY.—The term ‘credit
6 facility’ has the same meaning as in section
7 714(f)(1)(A) of title 31, United States Code.

8 “(B) COVERED TRANSACTION.—The term
9 ‘covered transaction’ means—

10 “(i) any open market transaction with
11 a nongovernmental third party conducted
12 under the first undesignated paragraph of
13 section 14 or subparagraph (a), (b), or (c)
14 of the 2nd undesignated paragraph of such
15 section, after the date of the enactment of
16 the Restoring American Financial Stability
17 Act of 2010; and

18 “(ii) any advance made under section
19 10B after the date of the enactment of
20 such Act.

21 “(5) TERMINATION OF CREDIT FACILITY BY OP-
22 ERATION OF LAW.—A credit facility shall be deemed
23 to have terminated as of the end of the 24-month
24 period beginning on the date on which the credit fa-
25 cility ceases to make extensions of credit and loans,

1 unless the credit facility is otherwise terminated by
2 the Board before such date.

3 “(6) CONSISTENT TREATMENT OF INFORMA-
4 TION.—Except as provided in this subsection or sec-
5 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
6 United States Code, the information described in
7 paragraph (1) and information concerning the trans-
8 actions described in section 714(f) of such title, shall
9 be confidential, including for purposes of section
10 552(b)(3) of title 5 of such Code, unless the Board
11 determines that disclosure of such information would
12 be in the public interest and would not harm the ef-
13 fectiveness of the relevant credit facility or the pur-
14 pose of conduct of the relevant transactions.

15 “(7) PROTECTION OF PERSONAL PRIVACY.—
16 This subsection and section 13(3)(C), section
17 714(f)(3)(C) of title 31, United States Code, and
18 section 1109(a) or (c) of the Restoring American Fi-
19 nancial Stability Act of 2010 shall not be construed
20 as requiring any disclosure of nonpublic personal in-
21 formation (as defined for purposes of section 502 of
22 the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-
23 cerning any individual who is referenced in collateral
24 pledged or assets transferred in connection with a
25 credit facility or covered transaction unless the per-

1 son is a borrower, participant, or counterparty under
2 the credit facility or covered transaction.”.

Page 1735, strike line 18 and all that follows
through page 1751, line 7, and insert the following new
sections:

3 **SEC. 1104. EMERGENCY FINANCIAL STABILIZATION.**

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

20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the issuance of

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

7 (c) CAP FOR GUARANTEED AMOUNT.—

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

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

1 shall be considered granted by Congress upon adop-
2 tion of a joint resolution approving such request.
3 Such joint resolution shall be considered in the Sen-
4 ate under expedited procedures.

5 (d) FUNDING.—

6 (1) ADMINISTRATIVE EXPENSES AND COST OF
7 GUARANTEES.—A program established pursuant to
8 this section shall require funding only for the pur-
9 poses of paying administrative expenses and for pay-
10 ing a guarantee in the event that a guaranteed loan
11 defaults.

12 (2) FEES AND OTHER CHARGES.—The Corpora-
13 tion shall charge fees or other charges to all partici-
14 pants in such program established pursuant to this
15 section to offset projected losses and administrative
16 expenses. To the extent that a program established
17 pursuant to this section has expenses or losses, the
18 program will be funded entirely through fees or
19 other charges assessed on participants in such pro-
20 gram.

21 (3) EXCESS FUNDS.—If at the conclusion of
22 such program there are any excess funds collected
23 from the fees associated with such program, the
24 funds will be deposited into the Deposit Insurance

1 Fund established under section 11(a) of the Federal
2 Deposit Insurance Act.

3 (4) AUTHORITY OF CORPORATION.—For pur-
4 poses of conducting a program established pursuant
5 to this section, the Corporation—

6 (A) may borrow funds from the Secretary
7 of the Treasury, which shall be repaid in full
8 with interest through fees and charges paid by
9 participants in accordance with paragraph (2),
10 and there shall be available to the Corporation
11 amounts in the Treasury not otherwise appro-
12 priated, including for the payment of reasonable
13 administrative expenses; and

14 (B) may not borrow funds from the De-
15 posit Insurance Fund established pursuant to
16 section 11(a)(4) of the Federal Deposit Insur-
17 ance Act.

18 (5) BACK-UP SPECIAL ASSESSMENT.—To the
19 extent that the funds collected pursuant to para-
20 graph (2) are insufficient to cover any losses or ex-
21 penses (including monies borrowed pursuant to
22 paragraph (4)) arising from a program established
23 pursuant to this section, the Corporation shall im-
24 pose a special assessment solely on participants in
25 the program.

1 (e) PLAN FOR MAINTENANCE OR INCREASE OF
2 LENDING.—In connection with any application or request
3 to participate in such program authorized pursuant to this
4 section, a solvent entity seeking to participate in such pro-
5 gram shall be required to submit to the Corporation a plan
6 detailing how the use of such guaranteed funds will facili-
7 tate the increase or maintenance of such solvent com-
8 pany's level of lending to consumers or small businesses.

9 (f) SUNSET OF CORPORATION'S AUTHORITY.—The
10 Corporation's authority under subsections (a) and (d) and
11 the authority to borrow funds from the Treasury under
12 section 1609(o) shall expire on December 31, 2013.

13 (g) RULE OF CONSTRUCTION.—For purposes of this
14 section, a guarantee of deposits held by insured depository
15 institutions shall not be treated as a debt guarantee pro-
16 gram.

17 (h) DEFINITIONS.—For purposes of this section, the
18 following definitions apply:

19 (1) CORPORATION.—The term “Corporation”
20 means the Federal Deposit Insurance Corporation.

21 (2) DEPOSITORY INSTITUTION HOLDING COM-
22 PANY.—The term “depository institution holding
23 company” has the meaning given the term in section
24 3 of the Federal Deposit Insurance Act (12 U.S.C.
25 1813).

1 (3) INSURED DEPOSITORY INSTITUTION.—The
2 term “insured depository institution” has the mean-
3 ing given the term in section 3 of the Federal De-
4 posit Insurance Act (12 U.S.C. 1813).

5 (4) SOLVENT.—The term “solvent” means as-
6 sets are more than the obligations to creditors.

7 **SEC. 1105. ADDITIONAL RELATED AMENDMENTS.**

8 (a) FEDERAL DEPOSIT INSURANCE ACT RELATED
9 AMENDMENTS.—Effective upon the date of the enactment
10 of this section, the Corporation may not exercise its au-
11 thority under section 13(c)(4)(G)(i) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to estab-
13 lish any widely-available debt guarantee program for
14 which section 1104 would provide authority.

15 (b) EFFECT OF DEFAULT ON AN FDIC GUAR-
16 ANTEE.—If an insured depository institution or depository
17 institution holding company participating in a program
18 under section 1104 or any participant in a debt guarantee
19 program established pursuant to section 13(c)(4)(G)(i) of
20 the Federal Deposit Insurance Act defaults on any obliga-
21 tion guaranteed by the Corporation after the date of en-
22 actment of this Act, the Corporation, unless such default
23 is cured within 60 days, or the Corporation determines
24 that such action would have serious adverse effects on eco-
25 nomic conditions or financial stability, shall—

1 (1) appoint itself as receiver for the insured de-
2 pository institution that defaults;

3 (2) with respect to any other participating com-
4 pany that is not an insured depository institution
5 that defaults—

6 (A) require consideration of whether a de-
7 termination shall be made as provided in sec-
8 tion 1603 to resolve the company under subtitle
9 G; and

10 (B) if the Corporation is not appointed re-
11 ceiver pursuant to title II within 30 days of the
12 date of default, require the company to file a
13 petition for bankruptcy under section 301 of
14 title 11, United States Code, or file a petition
15 for bankruptcy against the company under sec-
16 tion 303 of title 11, United States Code.

17 (c) **AUTHORITY TO FILE INVOLUNTARY PETITION**
18 **FOR BANKRUPTCY.**—Section 303 of title 11, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 “(m) Notwithstanding subsections (a) and (b), an in-
22 voluntary case may be commenced by the Federal Deposit
23 Insurance Corporation against a depository institution
24 holding company as defined in section 3 of the Federal
25 Deposit Insurance Act (12 U.S.C. 1813) or other company

1 participating in a guarantee program established by the
2 Corporation on the ground that the company has defaulted
3 on a debt or obligation guaranteed by the Corporation.”.

4 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON
5 DEBT GUARANTEED PURSUANT TO SECTION 1104.—Sec-
6 tion 507(a)(9) of title 11, United States Code, is amended
7 by inserting before the period at the end the following:
8 “and allowed unsecured claims based upon any debt to
9 the Federal Deposit Insurance Corporation that arose
10 prior to the commencement of the case under this title,
11 as a result of the debtor’s default on a guarantee provided
12 by the Corporation pursuant to section 1104 of the Re-
13 storing American Financial Stability Act of 2010 or the
14 Federal Deposit Insurance Act, under a program estab-
15 lished by the Corporation after the date of the enactment
16 of the Restoring American Financial Stability Act of
17 2010”.

18 **SEC. 1106. CORPORATION MAY RECEIVE WARRANTS WHEN**
19 **PAYING OR RISKING TAXPAYER FUNDS.**

20 (a) IN GENERAL.—In connection with any payment,
21 credit extension, or guarantee or any commitment under
22 section 1104, the Corporation may obtain from the in-
23 sured depository institution, depository institution holding
24 company (including any affiliates thereof), or covered fi-
25 nancial company, as the case may be—

1 (1) in the case of an insured depository institu-
2 tion, depository institution holding company (includ-
3 ing any affiliates thereof), or covered financial com-
4 pany, the securities of which are traded on a na-
5 tional securities exchange, a warrant giving the right
6 to the Corporation to receive nonvoting common
7 stock or preferred stock in such financial institution,
8 or voting stock with respect to which, the Corpora-
9 tion agrees not to exercise voting power, as the Cor-
10 poration determines appropriate; or

11 (2) in the case of any insured depository insti-
12 tution, depository institution holding company (in-
13 cluding any affiliates thereof), or covered financial
14 company other than one described in paragraph (1),
15 a warrant for common or preferred stock, or a sen-
16 ior debt instrument from such financial institution,
17 as described in subsection (b)(3).

18 (b) TERMS AND CONDITIONS.—The terms and condi-
19 tions of any warrant or senior debt instrument required
20 under subsection (a) shall meet the following require-
21 ments:

22 (1) PURPOSES.—Such terms and conditions
23 shall, at a minimum, be designed—

24 (A) to provide for reasonable participation
25 by the Corporation, for the benefit of taxpayers,

1 in equity appreciation in the case of a warrant
2 or other equity security, or a reasonable interest
3 rate premium, in the case of a debt instrument;
4 and

5 (B) to provide additional protection for the
6 taxpayer against losses from such payment, ex-
7 tension of credit, or guarantee by the Corpora-
8 tion under this title.

9 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-
10 RENDER.—The Corporation may sell, exercise, or
11 surrender a warrant or any senior debt instrument
12 received under this subsection, based on the condi-
13 tions established under paragraph (1).

14 (3) CONVERSION.—The warrant shall provide
15 that if, after the warrant is received by the Corpora-
16 tion under this subsection, the financial company
17 that issued the warrant is no longer listed or traded
18 on a national securities exchange or securities asso-
19 ciation, as described in subsection (a)(1), such war-
20 rants shall convert to senior debt, or contain appro-
21 priate protections for the Corporation to ensure that
22 the Corporation is appropriately compensated for the
23 value of the warrant, in an amount determined by
24 the Corporation.

1 (4) PROTECTIONS.—Any warrant representing
2 securities to be received by the Corporation under
3 this subsection shall contain anti-dilution provisions
4 of the type employed in capital market transactions,
5 as determined by the Corporation. Such provisions
6 shall protect the value of the securities from market
7 transactions such as stock splits, stock distributions,
8 dividends, and other distributions, mergers, and
9 other forms of reorganization or recapitalization.

10 (5) EXERCISE PRICE.—The exercise price for
11 any warrant issued pursuant to this subsection shall
12 be set by the Corporation, in the interest of the tax-
13 payers.

14 (6) SUFFICIENCY.—The financial company
15 shall guarantee to the Corporation that it has au-
16 thorized shares of nonvoting stock available to fulfill
17 its obligations under this subsection. Should the fi-
18 nancial company not have sufficient authorized
19 shares, including preferred shares that may carry
20 dividend rights equal to a multiple number of com-
21 mon shares, the Corporation may, to the extent nec-
22 essary, accept a senior debt note in an amount, and
23 on such terms as will compensate the Corporation
24 with equivalent value, in the event that a sufficient

1 shareholder vote to authorize the necessary addi-
2 tional shares cannot be obtained.

3 (c) EXCEPTIONS.—The Corporation shall establish
4 an exception to the requirements of this section and appro-
5 priate alternative requirements for any participating fi-
6 nancial company that is legally prohibited from issuing se-
7 curities and debt instruments, so as not to allow cir-
8 cumvention of the requirements of this section.

Page 1751, line 10, strike “The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4” and all that follows through page 1752, line 6, and insert “The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting ‘The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the President.’”.

Page 1754, after line 17, insert the following new subsection:

9 (e) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

1 (1) NO DECISIONS BY FEDERAL RESERVE BANK
2 PRESIDENTS.—No provision of title I relating to the
3 authority of the Board of Governors shall be con-
4 strued as conferring any decision-making authority
5 on presidents of Federal reserve banks.

6 (2) VOTING DECISIONS BY BOARD.—The Board
7 of Governors shall not delegate the authority to
8 make any voting decision that the Board of Gov-
9 ernors is authorized or required to make under this
10 title I in contravention of section 11(k) of the Fed-
11 eral Reserve Act.

Page 1761, after line 14, insert the following new
section:

12 **SEC. 1110. CERTAIN RESTRICTIONS RELATED TO FOREIGN**
13 **CURRENCY SWAP AUTHORITY.**

14 Section 14 of the Federal Reserve Act is amended
15 by adding at the end the following new subsection:

16 “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN
17 CURRENCY SWAP AUTHORITY.—A Federal reserve bank
18 may not take any action pursuant to the authority pro-
19 vided under this section with respect to foreign currency
20 swaps unless—

21 “(1) such action is approved in advance by the
22 affirmative vote of not less than five members of the

1 Board of Governors of the Federal Reserve System;
2 and
3 “(2) such action is taken with the written con-
4 currence of the Secretary of the Treasury.”.



6/16/10

HOUSE PROPOSED AMENDMENTS TO TITLE XI

[Page and line #s refer to Base text of proposed conference report]

Page 1724, line 16, strike "and".

Page 1724, line 18, strike "losses and" and insert "losses,".

Page 1724, line 19, strike "orderly fashion." and insert "orderly fashion, and that the Board and the Secretary of the Treasury would have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99 percent confidence that funds disbursed under the facility or program will be fully repaid, and interest thereon will be paid, to the Federal Reserve System".

Page 1730, strike line 7 and insert the following:

- 1 (1) DEFINITIONS.—For purposes of this sub-
- 2 section, the following definitions shall apply:
- 3 (A) CREDIT FACILITY.—The term

Page 1730, after line 15, insert the following new subparagraph:

1 (B) COVERED TRANSACTION.—The term
2 “covered transaction” means any open market
3 transaction or discount window advance that
4 meets the definition of “covered transaction” in
5 section 11(s) of the Federal Reserve Act .

Page 1731, line 2, insert “or a covered transaction”
after “credit facility”.

Page 1731, line 4, strike “of” and insert “gov-
erning”.

Page 1731, line 5, insert “or covered transaction”
after “credit facility”.

Page 1731, line 7, insert “or covered transaction”
after “the facility”.

Page 1731, line 10, insert “or the conduct of a cov-
ered transaction” after “credit facility”.

Page 1731, line 16, insert “or to conduct any cov-
ered transaction” after “credit facility”.

Page 1732, line 15, insert “or covered transaction”
after “credit facility”.

Page 1732, line 16, insert “or transferred by or to”
after “by”.

Page 1732, line 17, insert "or covered transaction" after "facility".

Page 1732, line 18, insert "or transferred" after "held".

Page 1732, line 19, insert "or covered transaction" after "credit facility".

Page 1733, line 5, strike "assets or collateral" and insert "assets, collateral, or transaction".

Page 1733, line 22, strike the closing quotation marks and the 2nd period.

Page 1733, after line 22, insert the following new clause:

1 “(v) RELEASE OF COVERED TRANS-
2 ACTION INFORMATION.—The Comptroller
3 General shall release a nonredacted version
4 of any report regarding covered trans-
5 actions upon the release of the information
6 regarding such covered transactions by the
7 Board of Governors of the Federal Reserve
8 System as provided in section 11(s) of the
9 Federal Reserve Act.”.

Page 1734, strike line 19, and insert the following:

1 (a) IN GENERAL.—Section 2B of the Federal Reserve
2 Act (12 U.S.C.

Page 1735, after line 17 insert the following new
subsection:

3 (b) FEDERAL RESERVE TRANSPARENCY AND RE-
4 LEASE OF INFORMATION.—Section 11 of the Federal Re-
5 serve Act (12 U.S.C. 248) the following new subsection:

6 “(s) FEDERAL RESERVE TRANSPARENCY AND RE-
7 LEASE OF INFORMATION.—

8 “(1) IN GENERAL.—In order to ensure the dis-
9 closure in a timely manner consistent with the pur-
10 poses of this Act of information concerning the bor-
11 rowers and counterparties participating in emer-
12 gency credit facilities, discount window lending pro-
13 grams and open market operations authorized or
14 conducted by the Board or a Federal reserve bank,
15 the Board of Governors of the Federal Reserve Sys-
16 tem shall disclose, as provided in paragraph (2)—

17 “(A) the names and identifying details of
18 each borrower, participant or counterparty in
19 any credit facility or covered transaction;

20 “(B) the amount borrowed by or trans-
21 ferred by or to a specific borrower, participant
22 or counterparty in any credit facility or covered
23 transaction;

1 “(C) the interest rate or discount paid by
2 each borrower, participant or counterparty in
3 any credit facility or covered transaction; and

4 “(D) information identifying the types and
5 amounts of collateral pledged or assets trans-
6 ferred in connection with participation in any
7 credit facility or covered transaction.

8 “(2) MANDATORY RELEASE DATE.—In the case
9 of—

10 “(A) a credit facility, the Board shall dis-
11 close the information described in paragraph
12 (1) on the date that is 1 year after the effective
13 date of the termination by the Board of the au-
14 thorization of the credit facility; and

15 “(B) a covered transaction, the Board
16 shall disclose the information described in para-
17 graph (1) on the last day of the eighth calendar
18 quarter following the calendar quarter in which
19 the covered transaction was conducted.

20 “(3) EARLIER RELEASE DATE AUTHORIZED.—
21 The Chairman of the Board may publicly release the
22 information described in paragraph (1) before the
23 relevant date specified in paragraph (2) if the Chair-
24 man determines that such disclosure would be in the
25 public interest and would not harm the effectiveness

1 of the relevant credit facility or the purpose or con-
2 duct of covered transactions.

3 “(4) DEFINITIONS.—For purposes of this sub-
4 section, the following definitions shall apply:

5 “(A) CREDIT FACILITY.—The term ‘credit
6 facility’ has the same meaning as in section
7 714(f)(1)(A) of title 31, United States Code.

8 “(B) COVERED TRANSACTION.—The term
9 ‘covered transaction’ means—

10 “(i) any open market transaction with
11 a nongovernmental third party conducted
12 under the first undesignated paragraph of
13 section 14 or subparagraph (a), (b), or (c)
14 of the 2nd undesignated paragraph of such
15 section, after the date of the enactment of
16 the Restoring American Financial Stability
17 Act of 2010; and

18 “(ii) any advance made under section
19 10B after the date of the enactment of
20 such Act.

21 “(5) TERMINATION OF CREDIT FACILITY BY OP-
22 ERATION OF LAW.—A credit facility shall be deemed
23 to have terminated as of the end of the 24-month
24 period beginning on the date on which the credit fa-
25 cility ceases to make extensions of credit and loans,

1 unless the credit facility is otherwise terminated by
2 the Board before such date.

3 “(6) CONSISTENT TREATMENT OF INFORMA-
4 TION.—Except as provided in this subsection or sec-
5 tion 13(3)(D), or in section 714(f)(3)(C) of title 31,
6 United States Code, the information described in
7 paragraph (1) and information concerning the trans-
8 actions described in section 714(f) of such title, shall
9 be confidential, including for purposes of section
10 552(b)(3) of title 5 of such Code, unless the Board
11 determines that disclosure of such information would
12 be in the public interest and would not harm the ef-
13 fectiveness of the relevant credit facility or the pur-
14 pose of conduct of the relevant transactions.

15 “(7) PROTECTION OF PERSONAL PRIVACY.—
16 This subsection and section 13(3)(C), section
17 714(f)(3)(C) of title 31, United States Code, and
18 section 1109(a) or (c) of the Restoring American Fi-
19 nancial Stability Act of 2010 shall not be construed
20 as requiring any disclosure of nonpublic personal in-
21 formation (as defined for purposes of section 502 of
22 the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-
23 cerning any individual who is referenced in collateral
24 pledged or assets transferred in connection with a
25 credit facility or covered transaction unless the per-

1 son is a borrower, participant, or counterparty under
2 the credit facility or covered transaction.”.

Page 1735, strike line 18 and all that follows
through page 1751, line 7, and insert the following new
sections:

3 **SEC. 1104. EMERGENCY FINANCIAL STABILIZATION.**

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

20 (b) POLICIES AND PROCEDURES.—Prior to exercising
21 any authority under this section, the Corporation shall es-
22 tablish policies and procedures governing the issuance of

+
Strike
pages
9-18
of
appe

**AMENDMENT TO THE HOUSE PROPOSED
AMENDMENTS TO TITLE XI
OFFERED BY MR. FRANK OF MASSACHUSETTS**

Page 8 of the proposal, line 2, strike the quotation marks and the final period and insert the following after such line:

1 “(8) RULE OF CONSTRUCTION.—Nothing in
2 this section is meant to affect any pending litigation
3 or lawsuits filed under section 552 of title 5, United
4 States Code (popularly known as the Freedom of In-
5 formation Act), on or before the date of the enact-
6 ment of the Restoring American Financial Stability
7 Act of 2010.”.



1 shareholder vote to authorize the necessary addi-
2 tional shares cannot be obtained.

3 (c) EXCEPTIONS.—The Corporation shall establish
4 an exception to the requirements of this section and appro-
5 priate alternative requirements for any participating fi-
6 nancial company that is legally prohibited from issuing se-
7 curities and debt instruments, so as not to allow cir-
8 cumvention of the requirements of this section.

Page 1751, line 10, strike "The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4" and all that follows through page 1752, line 6, and insert "The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting 'The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the President.'".

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